

Amendment to Section 3.07
Restatement of the Code of By-Laws of Covington Homesteads Condominiums
Horizontal Property Regime

Resolved: that Section 3.07 of the By-Laws be amended to read:

Section 3.07. Limitation on Board Action. The authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$5000.00 without obtaining the prior approval of a majority of Owners, except in the following cases:

- (a) Contracts for replacing or restoring portions of the Common Areas or Limited Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;
- (b) Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and,
- (c) Expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

Approved by no less than 51% owners at the annual meeting of Owners on September 17th, 2020.

By:



Shiela Tomkinson, Secretary



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RESTATEMENT OF DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP OF COVINGTON HOMESTEADS CONDOMINIUMS HORIZONTAL PROPERTY REGIME

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This Restatement of Declaration of Horizontal Property Ownership of Covington Homesteads Condominiums Horizontal Property Regime (the "Restated Declaration") is executed under the following circumstances:

A. On August 29, 1984, the Declaration of Horizontal Property Ownership Covington Homesteads Condominiums Horizontal Property Regime was filed in the Allen County Recorder's Office in Book 7, pages 27 through 43, which Declaration has been amended twenty-two (22) times pursuant to amendments recorded at Document Numbers 85-005126, 85-018592, 85-027279, 85-027280, 85-036087, 86-037592, 86-051535, 87-008071, 87-017567, 87-050539, 87-061610, 88-5970, 88-024723, 88-050371, 89-031761, 89-47533, 89-049477, 90-043939, 92-035540, 93-071594, 94-46642, and 200075307 in the Office of the Recorder of Allen County, Indiana (collectively, the "Original Declaration").

B. Covington Homesteads Development Corporation, as the Declarant of the Original Declaration, as of the date hereof does not own or have any interest in the Property (as such term is defined in the Original Declaration).

C. Article 22 of the Original Declaration provides that the Original Declaration may be amended by the affirmative vote of not less than seventy-five percent (75%), in the aggregate, of the Home Owners at a meeting of the Home Owners held in accordance with said Article 22.

D. On September 9, 2009, such a meeting of the Home Owners was held in accordance with said Article 22, proper notice having been given, and more than seventy-five percent (75%) of the Home Owners voted to amend and restate, in its entirety, the Original Declaration so that this Restated Declaration, the appendix, and any exhibits attached hereto, and all future amendments thereto, shall supersede the Original Declaration and shall govern the Horizontal Property Ownership of Covington Homesteads Condominium Property Regime without reference to the Original Declaration (as those terms are defined in the Original Declaration), and the undersigned affirm such meeting was properly held and the necessary vote for approval by seventy-five percent (75%) was obtained.

E. This Restated Declaration shall not change the location, designation, or description of the Homes or Tracts comprising the Property as of the date hereof (as those terms are defined in the Original Declaration).

NOW, THEREFORE, in consideration of the above and foregoing, the Original Declaration is hereby amended and restated, in its entirety, as follows:

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ARTICLE I
Definitions

In addition to the words and phrases defined in the recitals and elsewhere in this Restated Declaration, the words and terms defined in this Article I shall have the meanings herein specified unless the context or use clearly requires another or different meaning or intent. Those words not expressly defined herein and used herein with initial capital letters where rules of grammar do not otherwise require capitalization shall have the meanings assigned to them in the Code of By-Laws, as hereinafter defined.

- (a) "Act" means Indiana Code Title 32, Article 25, as may be amended from time to time, and known as the Horizontal Property Law of the State of Indiana. The Act is incorporated herein by reference.
- (b) "Appropriate Zoning Authority" shall mean, with respect to any action regarding the administration of the zoning ordinance applicable to COVINGTON HOMESTEADS CONDOMINIUMS, the appropriate administrator or agency with authority to administer the zoning laws of the City of Fort Wayne, Indiana, or where such administrator or agency lacks the capacity to take the action or fails to take such action, the governmental official or body, administrative or judicial, in which authority is vested under applicable law to hear appeals from or review of such action or inaction or has the capacity to administer such zoning ordinance, and such term shall apply to the legal successors in interest to such administrator, agency or bodies.
- (c) "Association" means the incorporated association of Co-Owners of COVINGTON HOMESTEADS CONDOMINIUMS ASSOCIATION, INC., more particularly described in Article XIV.
- (d) "Board of Directors" means the governing body of the Association elected by the Co-Owners in accordance with the By-Laws.
- (e) "By-Laws" means the By-Laws of the Association providing for the administration and management of the Property as required by and in conformity with the provisions of the Act. A true copy of the Restatement of the Code of By-Laws of Covington Homesteads Condominiums Horizontal Property Regime is attached to this Restated Declaration and incorporated herein by reference as Appendix I.
- (f) "Common Areas" means the common areas and facilities appurtenant to the Property as defined in Article VII of this Restated Declaration.
- (g) "Common Expenses" means expenses of administration of the Association and expenses for the upkeep, maintenance, repair and replacement of the Common Areas and Limited Areas and all sums lawfully assessed against the Owners by

the Association or as declared by the Act, this Restated Declaration or the By-Laws.

- (h) "Co-Owners" means the Owners of all the Homes.
- (i) "COVINGTON HOMESTEADS CONDOMINIUMS" means the name by which the Property within the horizontal property regime created by this Restated Declaration pursuant to the Act shall be known.
- (j) "Home" means one of the living units constituting COVINGTON HOMESTEADS CONDOMINIUMS. Each individual unit shall be a separate freehold estate as provided in the Act, consisting of the space bounded by such unit and being more particularly described and identified in the Home Floor Plans and in Articles V and VI of this Restated Declaration. For purposes of the application of the Act to this Horizontal Property Regime, the term "Home" as used in this Restated Declaration and all attending documents shall be deemed to be synonymous with the term "Condominium Unit" as used in the Act. Wherever the term "Condominium Unit" is used in the Act, the same shall be deemed to apply to the term "Home" as used in the documents of this Horizontal Property Regime.
- (k) "Limited Areas" or "Limited Common Areas" means the limited common areas and facilities as defined in Article VIII of this Restated Declaration.
- (l) "Mortgagee" means the holder of a mortgage lien on a Home.
- (m) "Owner" means a person, firm, corporation, association, partnership, trust or other legal entity, or any combination thereof, who owns fee simple title to a Home and the Condominium Interest inherent therein.
- (n) "Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas and Limited Areas appertaining to each Home as determined in accordance with Article IX of this Restated Declaration.
- (o) "Percentage Vote" means the percentage of the total vote accruing to all of the Homes which is appurtenant to each particular Home and accrues to the Owner thereof. The Percentage Vote to which each Owner shall be entitled on any matter upon which the Co-Owners are entitled to vote shall be the same percentage as the Percentage Interest appurtenant to such Owner's Home.
- (p) "Site Development Plan" means the layout drawings of the Tract and Homes for COVINGTON HOMESTEADS CONDOMINIUMS prepared by Owens Russell Associates, Inc., certified by Timothy F. Owens, a Registered Land Surveyor, under the original date of November 21, 1983 and last revised on September 18, 1985, representing the development of the Tract, said layout drawings, together

with legal description appearing thereon being marked Exhibit "A" and incorporated herein by reference.

- (q) "Home Floor Plans" means the architectural drawings detailing the layout, location, identification, dimensions, and unit numbers of the existing Homes located on portions of the Tracts and are attached hereto as Exhibits B-1 through B-12, B-14 through B-21, and B-24 through B-27. The Home Floor Plans also set forth the Homes placed upon the Tract, set forth the relation of the Homes to lot lines, set forth the Home numbers and describe the Common Areas and Limited Common Areas, as applicable, for each Home.
- (r) "Property" means the Tract and appurtenant easements, including therein any annexations or additions thereto, the Homes, the non-residential buildings, garages, improvements, and property of every kind and nature whatsoever, real, personal and mixed, located upon the Tract and used in connection with the operation, use and enjoyment of COVINGTON HOMESTEADS CONDOMINIUMS. The term "Project" shall mean the condominium project known as COVINGTON HOMESTEADS CONDOMINIUMS HORIZONTAL PROPERTY REGIME, including therein all "Property" making up the same, as said term has been defined in this paragraph.
- (s) "Resident" means any Owner and inhabitant of a Home.
- (t) "Tract" means the real estate described in Exhibit "C" attached hereto and incorporated herein by reference.
- (u) "Condominium Interest" shall mean the following:
 1. Fee simple title to a Home.
 2. An undivided percent interest as tenants in common, together with all other Owners, in the Common Areas and Limited Common Areas of the Tract.
 3. An exclusive right to use the areas described in the Restated Declaration, Plans and accompanying documents, as "Limited Common Areas" and restricted to the use of the Owner's respective Home.
 4. A membership in the Association, as hereinafter defined, subject to this Restated Declaration, the By-Laws of said Association, and all governing documents of said Association.

ARTICLE II
Declaration

The Association, together with the Owners whom are the owners of Homes constructed upon the Tract hereby expressly declare that said Homes and Tract shall be deemed to be a part of the Property and shall be a Horizontal Property Regime in accordance with the provisions of the Act.

ARTICLE III
Description of Project

Twenty-four (24) homes have been constructed in the Project, and the total number of Homes shall not exceed twenty-six (26). The Homes are identified and referred to in the Home Floor Plans and in this Restated Declaration by number, said number being equivalent to the street numbers assigned by the Allen County Plan Commission. The Homes are limited to one (1) or two (2) stories in height and contain separate residential units, as specifically set forth and shown on the Home Floor Plans.

ARTICLE IV
Home Locations

The Site Development Plan discloses the location of streets, front building lines set back from said streets and rear building lines set back from the east and west property lines of the Tract. The location of any perimeter wall of a Home shall be no nearer to a street than said front building lines and no nearer to a Tract property line than said rear building lines, except that decks and porches of a Home, whether enclosed or not, may not be built within forty-five (45) feet of the east property line of Phase I of the Tract. No perimeter wall of a Home may be located less than 15 feet from the side of a perimeter wall of any other Home. The rear perimeter walls of any two Homes shall not be less than 30 feet, one from the other. The side perimeter walls of any Home may not be closer than 25 feet from the rear of any other Home. These restrictions shall not apply between non-residential units.

- (a) Developer's Improvements. Before any Home shall be used and occupied as a Dwelling, the developer or any subsequent Owner of any Home site shall install improvements serving said Home site as provided in the Site Development Plan for this Restated Declaration. This covenant shall run with the land and be enforceable by the Appropriate Zoning Authority, or by any aggrieved Owner within the Restated Declaration.
- (b) Permits. Before any site may be used or occupied, such user or occupier shall first obtain from the Appropriate Zoning Authority the improvement location permit and certificate of occupancy as required by the terms and conditions of the applicable zoning ordinance.
- (c) Surface Drainage Easements. Surface drainage easements and Common Areas used for drainage purposes as shown on the Site Development Plan 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 in an unobstructed condition and the Allen County, Indiana 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.

No Owner shall cause or permit water discharged from sump pumps or footing drains, or rain water from roofs, lawns or paved areas, within his control, to be directed in any manner into the sanitary sewer system of the service utility.

- (d) Obstructions. All easements shall be kept free at all times of permanent structures except improvements installed by an authorized utility and removal of any obstruction by a utility company shall in no way obligate the company to restore the obstruction. Any structure, shrubbery, trees, or other installation located on easements for public and municipal utilities and sewers, whether temporary or permanent, shall be subject to the paramount right of the utility or sewage treatment works to install, repair, maintain or replace its utility and sewer installation.
- (e) Flood Protection Grades. The minimum protection grades for condominium building sites, No.'s 5-13, 23, 24, 27 and 28, shall be 815.0 feet M.S.L. The minimum flood protection grade is defined as the elevation of the lowest point around the perimeter of a building at which flood waters may enter the interior of the building, including the basement, if any exists.
- (f) Run With The Land. The covenants and restrictions herein contained shall run with the land and be effective from the date of recordation of this Restated Declaration.

ARTICLE V **Identification of Homes**

- (a) Identification by Number. Each Home is identified by street numbers assigned by the Appropriate Zoning Authority. The Site Development Plan sets forth the location of the Homes placed upon the Tract as described in Article IV above, sets forth the relation of the Homes to lot lines, and establishes the proposed placement of Homes upon the Tract. The street numbers designating the Homes are also set forth on the Home Floor Plans to further designate the dimensions, layout and location of the respective Homes.
- (b) Legal Description. The legal description for each Home shall be the numerical designation assigned to it as shown on the Home Floor Plans. By way of example, a given Home shall be legally described as follows: No. 2830 Little River Run

COVINGTON HOMESTEADS CONDOMINIUMS, a Horizontal Property Regime in Allen County, Indiana.

ARTICLE VI
Description of Homes

- (a) Appurtenances. Each Home shall consist of all space within the boundaries thereof as hereinafter defined, and all portions of the Home situated within such boundaries, including but not limited to, all fixtures, facilities, utilities, equipment, appliances, and structural components designed and intended solely and exclusively for the enjoyment, use and benefit of the Home wherein the same are located, or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety, or enjoyment of any other Home or which may be necessary for the safety, support, maintenance, use and operation of the Home, or which are normally designed for common use; provided, however, that all fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Home shall constitute a part of such Home, whether or not the same are located within or partly within the boundaries of such Home. The interior surface of all doors and windows (excluding frames), in the perimeter walls of a Home, whether or not located within or partly within the boundaries of a Home, and all interior walls within the boundaries of a Home, are considered part of the Home.
- (b) Boundaries. The boundaries of each Home shall be as shown on the Home Floor Plans without regard to the existing construction measured between the interior unfinished surface of the floors, ceilings and perimeter walls of each Home. In the event any horizontal or vertical boundary line shown on the Home Floor Plans does not coincide with the actual location of the respective walls, floor or ceiling surface of the Home because of inexactness of construction settling after construction, or for any other reasons, the boundary lines of each Home shall be deemed to be and treated for purposes of occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent easements for exclusive use shall exist in favor of the Owner of each Home in and to such space lying outside of the actual boundary line of the Home, but within the appropriate wall, floor or ceiling surface of the Home.
- (c) Each Home shall carry with it and have inherent therein a "Condominium Interest", as that term is hereinabove defined, and said Condominium Interest shall be inseparable from said Home and shall pass with the fee interest to said Home as an integral part thereof.

ARTICLE VII
Common Areas and Facilities

Common Areas means and includes all portions of the Tract and the improvements thereon, except the portion assigned or to be assigned to fewer than all of the Owners, or to the Association, all as provided for in this Restated Declaration, the By-Laws of the Association, and Home Floor Plans of COVINGTON HOMESTEADS CONDOMINIUMS.

Common Areas shall include, but may not be limited to, the following: (1) the Tract; (2) the yards, gardens, driveways and sidewalks leading to and from individual Homes; (3) central water and sanitary sewer mains serving the Homes; (4) exterior lighting fixtures and electrical service lighting the exterior of the Homes; (5) pipes, ducts, electrical wiring and conduits and public utility lines; (6) all facilities and appurtenances located outside of the boundary lines of the Homes, except those areas and facilities expressly defined as part of a Home and/or Limited Area; (7) all non-residential buildings situated on the tract; and (8) those areas designated as Common Areas in the Plat of Major Common Areas prepared by Russell Engineering Associates, Inc., under the original date of November 30, 2000, said drawings, together with the legal description appearing thereon, being attached hereto and incorporated herein by reference as Exhibit "D."

ARTICLE VIII
Limited Common Areas and Facilities

Limited Common Areas shall be those portions of the Common Areas described above which are limited in their use and enjoyment to fewer than all the Owners. Limited Common Areas and those Homes to which use thereof is limited are as follows:

- (a) Patios. For every Home there is a patio designated on the Home Floor Plans. Each patio shall be limited to the use and enjoyment of the Home to which the patio is appurtenant and yard area adjoins, as designated on the Plans.
- (b) Entranceways. Entranceways through which access to the Home is obtained are limited to the use and enjoyment of the Home or Homes served by such entranceway, including tributary sidewalks and driveways leading to and from individual Homes.
- (c) Utilities and Improvements Serving Individual Homes. All Utilities lying within the Home and exclusively serving a particular Home or Homes within the Project shall be deemed to be Limited Common Areas, and shall be restricted to the use and enjoyment of the Home or Homes which they serve. Such Utilities shall expressly be deemed to include all Water, Sewer, Gas, Electrical, Telephone and Heating lines, ducts, improvements and facilities of every type or nature whatsoever. Except as may otherwise be expressly provided, such Utilities and all portions thereof lying outside the exterior perimeters of any Home shall be deemed to be and remain Common Areas. In addition to those facilities established as Limited Common Areas above, all Air Conditioning facilities lying

within or without the exterior perimeters of any Home and serving any particular Home within any such Home shall be deemed to be Limited Common Areas, and shall be restricted to the use and enjoyment of the Home which they serve. Such Air Conditioning facilities shall include all Air Conditioning ducts, lines and improvements lying within the exterior perimeters of any Home, all Air Compressor Units located or lying outside any Home, and all lines, ducts or facilities connecting any such Compressor with any of the said lines, ducts or improvements within the perimeters of a Home.

ARTICLE IX

Ownership of Common Areas and Percentage Interest

Each Owner shall have an undivided interest in the Common Areas and Limited Common Areas, as tenants in common with all other Owners, equal to his Home's Percentage Interest. The Percentage Interest in the Common Areas and Limited Common Areas appertaining to each Home is set forth in Exhibit "E" attached hereto. The Percentage Interest of each Home shall be equal for all purposes and shall be a percentage equal to the number one (1) divided by the total number of Homes which, from time to time, have been submitted and subjected to the Act and this Restated Declaration as herein provided and which constitute a part of COVINGTON HOMESTEADS CONDOMINIUMS. Except as otherwise provided or permitted herein, the Percentage Interest appertaining to each separate Home in the Common Areas and Limited Common Areas shall be of a permanent nature and shall not be altered without the unanimous consent of all the Owners and Mortgagees and then only if in compliance with all requirements of the Act.

The Percentage Interest appertaining to each Home shall also be the Percentage Vote allocable to the Owner thereof in all matters with respect to COVINGTON HOMESTEADS CONDOMINIUMS HORIZONTAL PROPERTY REGIME and the Association upon which the Co-Owners are entitled to vote.

ARTICLE X

Encroachments and Easements for Common Areas

If, by reasons of the location, construction settling, or shifting of a Home, any Common Area or Limited Area now encroaches or shall hereafter encroach upon any Home, then in such event, an easement shall be deemed to exist and run to the Co-Owners and the Association for the maintenance, use and enjoyment of such Common Area or Limited Area.

Notwithstanding anything hereinabove or hereinafter set forth, each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in any of the other Homes and serving his Home.

ARTICLE XI
Real Estate Taxes

Real estate taxes are to be separately taxed to each Home as provided in the Act. In the event for any year real estate taxes are not separately assessed and taxed to each Home, but are assessed and taxed on the Property, in whole or in part, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land in accordance with the Percentage interest appertaining to his respective Home, and shall further pay his proportionate share of the taxes on the improvements based upon the ratio between the value of his Home and the sum of the values of all Homes that make up the assessment on improvements. Where replacement costs have been established for purposes of insurance, such replacement costs shall be deemed to establish the relative values of the respective Homes for purposes of this paragraph. Any real estate taxes levied and imposed upon Common Areas or Limited Common Areas (other than Homes) shall be treated and paid as Common Expenses.

ARTICLE XII
Utilities

Each Owner shall pay his own utility costs which are separately metered. Utilities which are not separately metered shall be treated as and paid as part of the Common Expenses, unless otherwise agreed by a majority of the Percentage Vote of the Co-Owners.

ARTICLE XIII
Easement for Utilities and Public and Quasi-Public Vehicles

All public and quasi-public vehicles, including but not limited to police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles, shall have the right to enter upon the streets, Common Areas and Limited Areas of COVINGTON HOMESTEADS CONDOMINIUMS in the performance of their duties. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing, maintaining of such utilities, including but not limited to water, sewers, gas, telephones and electricity on the Property; provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines, or other utilities, except as may be approved by the Board of Directors. By virtue of this easement, the electric and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Property and to affix and maintain electric and telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Homes.

ARTICLE XIV
Association of Owners

In order to provide for maintenance, repair, replacement, administration and operation of the Property and in compliance with the provisions of the Act, there is hereby created an association of the Co-Owners of the Homes in COVINGTON HOMESTEADS CONDOMINIUMS, to be known as the COVINGTON HOMESTEADS CONDOMINIUMS

ASSOCIATION, INC. Each Owner shall be a member of the Association, but membership shall terminate when such person ceases to be an Owner, and will be transferred to the new Owner.

The Association shall elect a Board of Directors annually in accordance with and as prescribed by the By-Laws. The Co-Owners shall be entitled to cast their Percentage Vote for the election of the Board of Directors.

The Board of Directors shall be the governing body of the Association, representing all of the Co-Owners in providing for the management, maintenance, repair, replacement, and upkeep of the Property.

ARTICLE XV **Maintenance, Repairs and Replacement**

Each Owner shall, at his expense, be responsible for the maintenance, repairs, decoration and replacement within his own Home, except as may otherwise be provided in the By-Laws. Each Owner shall repair any defect occurring in his Home which, if not repaired, might adversely affect any Condominium Unit, Common Area, or Limited Area.

Maintenance, repairs, replacements and upkeep of the Common Areas and Limited Areas, except as otherwise set forth in this Restated Declaration or the By-Laws, shall be furnished by the Association, and shall be chargeable by the Association to all Homes or fewer than all Homes as the Restated Declaration, the By-Laws and rules and regulations of the Association of Owners shall provide.

The Board of Directors shall adopt such rules and regulations concerning maintenance, repairs, use and enjoyment of the Common Areas and Limited Areas as it deems appropriate.

The Association shall have the duty of determining by estimate or otherwise and collecting the amount of common expenses necessary to maintain, repair and administer the Property and all improvements constituting a part thereof, and said duties of the Association shall be more fully set out in the By-Laws thereof consistent with the following general statement of the obligations of said Association. The Association shall, after the annual meeting, and after the adoption of the annual budget, notify the Owner of each Condominium Unit (including Owners of lots upon which a Home has not been constructed) of their annual Regular Assessment, and shall collect such assessment in equal quarterly installments from each Condominium Unit Owner, commencing on the first day of January of each year following the adoption of the budget. The estimated Common Expenses shall be on a calendar year basis. The Association shall maintain and establish a reserve fund for deferred maintenance, repairs, administration costs, payment of a manager, if necessary, payment of insurance premiums and other matters deemed appropriate.

Common Expenses shall be deemed to include, but shall not be limited to the insurance premium for all insurable improvements, administration and management expenses and the cost of maintenance, repair and upkeep of the Common Area. All Owners shall be responsible and liable for a pro rata share of the Common Expenses.

Except as otherwise provided in the Restated Declaration, By-Laws and rules and regulations of the Association, it shall be the duty of the Association to provide maintenance, repair and upkeep of the Limited Common Area described in Article VIII. It shall be understood, however, that any damage caused by an Owner or tenant of an Owner through said party's willful or negligent acts shall be the responsibility of the Owner and a lien against the Home of such Owner as provided herein shall exist with respect to any such damage.

The Board of Directors or their designated agent shall have the right at reasonable times and upon reasonable prior notice (except in cases of emergency, in which case no notice shall be required), to enter into each individual Home for the purposes of inspection of the Home, Common Areas, and Limited Areas appurtenant thereto and for the further purpose of replacement, repair and maintenance of the same.

The Board of Directors shall have the sole and exclusive power, authority and obligation to determine all matters affecting assessments, except as may otherwise be provided for in this Restated Declaration and/or the By-Laws. Such power, authority and obligation shall expressly include but shall not be limited to the allocation of all assessments between Homes and Home Owners, the determination of whether property making up any portion of the Project constitutes Common Areas, or Limited Common Areas as provided for in the Restated Declaration and By-Laws, and the determination of whether expenditures with respect to any such property or affecting the same is assessable against all or fewer than all the Owners. Such determinations by the Board of Directors shall be binding upon all parties and all Owners unless it shall be shown that said determinations were made in bad faith with an intent to prefer certain Homes or Owners over others, or were made in contravention of the express terms and conditions of the Restated Declaration and/or the By-Laws.

ARTICLE XVI **Alterations, Additions, Improvements, Partition**

No Owner shall make any alterations or additions to any Home, or to the Common Areas or Limited Areas without the prior written approval of the Board of Directors, nor shall any Owner make any alterations to his respective Home and within the boundaries thereof which would affect the safety or integrity of the structure in which the Home is located. No Owner shall bring any action for partition or division of the Common or Limited Areas. There shall be no judicial partition of the Common or Limited Areas, nor shall declarant or any person acquiring any interest in the project or any part thereof seek any such judicial partition unless the property has been re-moved from the provisions of the Act, provided, however, that if any Home shall be owned by two or more persons as tenants-in-common, joint tenants or tenants by the entireties, nothing herein contained shall be deemed to prevent a judicial partition between such co-tenants, joint tenants or tenants by the entireties, but such partition shall not affect any other Home.

ARTICLE XVII

Insurance

The Association, acting through its Board of Directors, shall obtain fire and extended coverage insurance insuring each Home on the Property in an amount equal to the full replacement cost thereof as determined by a method or methods authorized by the Board. The cost of any appraisal shall be a Common Expense. Such insurance shall (1) provide that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to Article XVIII; (2) contain a "replacement cost endorsement;" and (3) provide full coverage for replacement of any Home regardless of what damage, if any, is sustained by any other Home. Such insurance coverage shall be for the benefit of each Owner in accordance with the replacement cost established for each respective Home, and, if applicable, the Owner's Mortgagee. In the case of a non-residential building, the Association, acting through its Board of Directors, shall obtain fire and extended coverage insurance in an amount equal to the full replacement cost of such non-residential building. The proceeds shall be payable to the Association or the Board of Directors, who shall hold such proceeds as trustee for the individual Owners and Mortgagees.

The Association shall also obtain comprehensive public liability insurance in such limits as the Board of Directors shall deem appropriate, together with workmen's compensation insurance and other liability insurance if deemed necessary or appropriate by the Board of Directors. Such insurance shall inure to the benefit of each individual Owner, the Association, the Board of Directors and any managing agent or company acting on behalf of the Association. Such insurance coverage shall also cover cross-liability claims of one insured against the other.

The premiums for all insurance shall be paid by the Association as part of the Common Expense; provided, however, the Board shall have the power and authority within its sole and exclusive discretion to treat those portions of insurance premiums attributable to separate Homes as Additional Expenses, separate from the established Common Expenses. Such Additional Expense of insurance may be charged to the respective Homes to which they apply individually, and shall constitute obligations exclusive to that Home. The Board shall further have the right to notify the respective Home Owners that insurance premiums shall be paid in whole or in part directly by the mortgagee, where appropriate, and such direction shall be followed by the Home Owners. By acceptance of the deed to any such Home, each and every Owner of such a Home consents to being charged for such additional insurance premium individually and agrees to pay the same. It shall be further understood and agreed by all parties accepting deeds as title to such Homes that such assessments for additional insurance premiums shall in all respects be enforceable against the Homes to which they apply and the Owners thereof in the same manner as Common Expenses shall be enforceable against all Homes and Owners.

Each Owner shall have the right to purchase any additional insurance he may deem necessary, and each Owner shall be solely responsible for insurance on the contents of his own Home, including all floor and wall coverings, and fixtures and betterments installed by the Owner, and his personal property stored elsewhere on the Property.

Notwithstanding anything hereinabove or hereinafter set forth, the Board of Directors may, from time to time and in its discretion, allow each Owner, in lieu of having such Owner's Home insured under the fire and extended coverage insurance of the Association, elect to obtain homeowner's, fire and extended coverage insuring such Owner's Home on the Property. Such right, if permitted by the Board, shall be subject to the Owner's compliance with this paragraph, submittal to the Board of evidence satisfactory to the Board of the value of the Home and compliance with any other requirements of the Board as to each Owner. Such homeowner's policy shall name the Association as an additional insured and shall be in an amount not less, and provide coverage on the Home no less extensive, than the amount and coverage that would have otherwise been provided for the Home under the Association's fire and extended coverage insurance policy under this Restated Declaration. The premiums for such homeowner's policy shall be paid by the Owner of the Home which such homeowner's policy covers in lieu of the Owner's share of the premiums paid by the Association which would otherwise have been attributable to the coverage of the Owner's Home. The election of an Owner to obtain a homeowner's policy in lieu of having the Owner's Home covered by the fire and extended coverage of the insurance of the Association shall not be effective until a copy of such homeowner's policy along with proof of payment of the premium thereon, has been furnished to the Board and the Board has approved the policy. In the event the Owner should allow the policy to lapse for non-payment of premium, the Association shall have the option to pay the premium thereon and cause such policy to be reinstated or to remain in full force and effect. Any such expenditure by the Association shall become a lien on the property insured and be assessed against the Owner of such property.

ARTICLE XVIII **Casualty and Restoration**

In the event all or any portion of the Home or Homes are destroyed by the occurrence of fire or other casualty, the respective Owner or Owners of such Home or Homes shall cause the Home or Homes therein to be promptly repaired and restored. The proceeds of the insurance carried by the Association or Owner shall be applied solely to the cost of such restoration. If the insurance proceeds are not adequate to cover the costs of reconstruction of any Home suffering casualty damage, or in the event there are no proceeds, the costs of restoring the damage suffered by any given Home shall be borne by the respective Owner or Owners of such Home to the full extent of the additional costs and expenses of such restoration or reconstruction over and above the insurance proceeds allocable to said Home. If any Owner refuses or fails to make the required repairs necessary to restore any casualty damage, and shall leave his Home in a state of disrepair, the other Owners shall (or the Association, if such Owners fail) complete the restoration and pay the cost thereof, and the cost attributable to the Owner or Owners who refuse or fail to make such repairs or restoration at the time required by the Board of Directors shall become a lien on such defaulting Owners' Homes and may be foreclosed in the same manner as provided for the lien of Common Expenses.

In the event of complete destruction of all the Homes in the Project, unless by a vote of two-thirds (2/3) of all the Owners of Homes a decision is made to rebuild all Homes, insurance proceeds shall be distributed in accordance with the provisions of the Act.

ARTICLE XIX
Condemnation

- (a) If all or any part of the Property is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association and each Owner shall be entitled to participate in the proceedings incident thereto at their respective expense. The Association shall give timely written notice of the existence of such proceedings to all Owners and to all Mortgagees known to the Association who have an interest in any Home. The expense of participation in such proceedings by the Association shall be borne by the Association. The Association is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and other persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. All damages or awards for any such taking shall be deposited with the Association and such damages or awards shall be applied as herein provided. In the event an action in eminent domain is brought to condemn a portion of the Common Areas (together with or apart from any Home), the Association in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of such condemnation proceedings.
- (b) With respect to any such taking, all damages and awards shall be determined for the taking of the individual Home and for the taking of the Common Areas and for each Owner's interest therein. After the damages or awards for such taking are determined, such damages or awards shall be paid to the account of each Owner for the loss of the individual Home plus an amount in proportion to his Percentage Interest in the Common Areas, unless restoration takes place as herein provided. The Association, if it deems advisable, may call a meeting of the Owners, at which meeting the Owners, by a majority vote, shall decide whether to replace or restore, as far as possible, the Common Areas so taken or damaged. In the event it is determined that such Common Areas should be replaced or restored by obtaining other land or building additional Homes, this Restated Declaration and the Home Floor Plans attached hereto shall be duly amended by instrument executed by the Association on behalf of the Owners. In the event such eminent domain proceedings results in the taking of or damage to one or more but less than two-third (2/3) of the total number of Homes, then the damages and awards for such taking shall be determined for each Home and the following shall apply:
- (1) The Association shall determine which of the Homes damaged by such taking may be made tenantable for the purposes set forth in this Restated Declaration, taking into account the nature of this Project and the reduced size of each Home so damaged.

- (2) The Association shall determine whether it is reasonably practicable to operate the remaining Homes of the Project, including those damaged Homes which may be made tenantable, as a condominium in the manner provided in this Restated Declaration.
- (3) Subject to the provisions of I.C. 32-25-8-16, should the Association determine that it is not reasonably practicable to operate the undamaged Homes and the damaged Homes which can be made tenantable, then the Project shall be deemed to be regrouped and merged into a single estate owned jointly in undivided interest by all Owners, as tenants in common, in the proportionate ownership interest previously owned by each Owner in the Common Areas. Any decision to terminate the condominium status of the Project must have the approval required by the Act.
- (4) In the event the Association determines it will be reasonably practicable to operate the undamaged Homes and the damaged Homes which can be made tenantable as a condominium, then the damages and awards made with respect to each Home which may be made tenantable shall be applied to repair and to reconstruct such Home so that it is made tenantable. The restoration shall be performed in accordance with this Restated Declaration and the original Home Floor Plans, unless other action is approved by holders of mortgages on Homes which have at least fifty-one percent (51%) of the votes in the Association. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Homes which are tenantable. With respect to those Homes which may not be tenantable, the awards shall be paid as set forth herein, and the remaining portion of such Homes, if any, shall become part of the Common Areas. Upon the payment of such award for the account of an Owner as provided herein, such Home shall no longer be a part of the Project, and the proportionate ownership interest in the Common Areas appurtenant to each remaining Home which shall continue as part of the Project shall be equitably adjusted to distribute the ownership of the undivided interest in the Common Areas among the reduced number of Owners based upon a determination which is acceptable under the Act. If two-thirds (2/3) or more of the Homes are taken or damaged by such taking, all damages and awards shall be paid to the accounts of the Owners of Homes, as provided herein, and this Condominium Regime shall terminate upon such payment. Upon such termination the Homes and Common Areas shall be deemed to be regrouped and merged into a single estate owned in undivided interest by all Owners as tenants in common and the proportionate ownership interest previously owned by each Owner in the Common Areas. In accordance with the provisions of the Act, by agreement of all Owners, and holders of all liens affecting any of the Homes or Common Areas or Limited Common Areas the property may be sold. In such instance, the Association shall record a notice setting forth such fact or facts, and upon the recording of such notice by the

Association's authorized officers, the entire premises shall be sold by the Association for all the Owners, free and clear by the provisions contained in this Restated Declaration, the Home Floor Plans and the By-Laws. The sales proceeds shall be apportioned between the Owners and Mortgagees as their interest may appear on the basis of each Owner's proportionate ownership interest in the regrouped estate. Any damages, awards or sales proceeds provided in this paragraph to be paid to or for the account of any Owner by the Association shall be applied as set forth herein.

ARTICLE XX
Protection of Mortgagee

- (a) Notice to Association. An Owner who mortgages his Home shall notify the Association, giving the name and address of his Mortgagee. Each Mortgagee shall be permitted to notify the Association of the fact that such Mortgagee holds a deed of trust or mortgage on a Home.
- (b) Notice of Default; Lapse in Insurance. The Association shall notify a Mortgagee in writing, upon written request of such Mortgagee identifying the name and address of the Mortgagee and the Home number, of any default by the Mortgagor in the performance of such Mortgagor's obligations, as set forth in this Restated Declaration, which is not cured within sixty (60) days. The Association, upon written request, shall notify a Mortgagee of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (c) Examination of Books. The Association shall permit a Mortgagee to examine the books and records of the Association upon request.
- (d) Notice of Damage or Destruction. The Association shall furnish a Mortgagee timely written notice of any substantial damage or destruction of any Home on which the Mortgagee holds a mortgage if such loss exceeds Five Thousand Dollars (\$5,000) and of any part of a Common Area if such loss exceeds Ten Thousand Dollars (\$10,000).
- (e) Management Agreements. Any management agreement and/or service contract entered into by the Board of Directors on behalf of the Association will be terminable by the Association without cause and without payment of a termination fee upon ninety (90) days or less written notice and the term of such management agreement will not exceed the period of three (3) years, renewable by agreement of the parties to such agreement for successive one (1) year periods. In the event of the termination of a management agreement, as provided herein, the Board of Directors shall enter into a new management agreement with a new management agent prior to the effective date of the termination of the old management agreement.

ARTICLE XXI
Covenants and Restrictions

The covenants and restrictions applicable to the use and enjoyment of the Homes are set forth herein and in the By-Laws. These covenants and restrictions are for the mutual benefit and protection of the present and future Owners, and shall run with the land and inure to the benefit of and be enforceable by any Owner, the Co-Owners or by the Association. Present or future Owners of the Association shall be entitled to injunctive relief against any violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation.

ARTICLE XXII
Assessments

- (a) Proposed Annual Budget. Annually, on or before the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing fiscal year estimating the total amount of the Common Expenses for the ensuing year and furnish a copy of such proposed budget to each Owner prior to the annual meeting. The annual budget shall be submitted to the Owners at the annual meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the ensuing fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part, or may be amended in whole or in part, by a majority of the vote; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved at such meeting, and provided further that until the Annual Budget is adopted the Directors are authorized to collect and expend monies only based on the prior year's budget.
- (b) Regular Assessments. The annual budget as adopted shall, based on the estimated cash requirement for the Common Expenses in the ensuing year as set forth in said budget, contain a proposed assessment against each Home based on the Percentage Interest of each Home. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against each respective Home (herein called the "Regular Assessment"). The Regular Assessment against each Home (including against lots upon which a Home has not yet been constructed) shall be paid in quarterly installments in advance, commencing on the first day of January of each year. Payment of the quarterly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay quarterly assessments semi-annually or annually, in advance. The Regular Assessment for said year shall become a lien on each separate Home as of the first day of January of each year. The Board of Directors of the Association may from time to time adopt late payment penalties with respect to the timely payment of such Regular Assessments, which may

penalties may be in addition to those otherwise provided in the Restated Declaration or in the By-Laws.

- (c) Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided by the By-Laws, the Restated Declaration or the Indiana Horizontal Property Law, the Board of Directors shall have the full right, power and authority to make special assessments not in excess of \$500.00 per each such occurrence and per Owner of a Home, which, upon resolution of the Board, shall become a lien on each Home, (herein called "Special Assessment").
- (d) Lien for Assessments.
- (i) All liens assessed but unpaid by an Owner for its share of Common Expenses or other expenses as are charged in this Declaration or the By-Laws which are chargeable to a respective Home, including interest thereon at 10% per annum, shall constitute a lien on such Home superior (prior) to all other liens and encumbrances, excepting only two:
1. All taxes and special assessments levied by governmental and taxing authorities; and
 2. All liens securing sums due or to become due under any duly recorded mortgage lien or deed of trust.
- (ii) To evidence such lien, the Association may, but shall not be required to, prepare written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Home and a description of the Home. Such notice shall be signed by one of the Board of Directors and may be recorded in the Office of the Recorder of Allen County, Indiana. Such lien for the Common Expenses shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure of the defaulting Owner's Home by the Association. Any such foreclosure sale is to be conducted in accordance with the provisions of I.C. 32-25-6-3. Each Owner, by accepting a deed to his Home, expressly grants to the Association a power of sale in connection with the assessment lien. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorney's fees. The Owner shall also be required to pay to the Association a reasonable rental for the Home during the period of foreclosure, and the Association shall be entitled to the appointment of a receiver to collect the same. The Association shall have the power to bid on the Home at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

- (iii) The amount of the Common Expenses assessed against each Home shall also be the debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid Common Expenses may be maintainable without foreclosing or waiving the lien securing same.
 - (iv) In addition, to the extent permitted by law, Declarant reserves and assigns to the Association, without re-course, a vendor's lien against each Home to secure payment of a Common Assessment or Special Assessment which is levied pursuant to the terms hereof. Said liens may be enforced by appropriate judicial proceedings and the expenses incurred in connection therewith, including, but not limited to, interest and the cost of reasonable attorney's fees, shall be chargeable to the Owner in default. Such lien shall be subordinated and inferior to those liens listed in subparagraph (d)(i) above.
 - (v) Any party holding a lien on a Home may pay any unpaid Common Expense payable with respect to such Home, and upon such payment, said party shall have a lien on such Home for the amount paid of the same rank as the lien of his encumbrance.
- (e) Maintenance and Repairs. Every Owner shall promptly perform all maintenance and repair within his own Home, which, if neglected, would affect the value of the Property. Maintenance and repairs for which the Owner is responsible to make at his expense include, but are not necessarily limited to, water, gas, plumbing and electric lines which service the Owner's Home only and are located within exterior walls of the Home, including any lines in the area from below the floor to above the roof if they are within an extension of the exterior walls of the Home; appliances to include garbage disposals, dishwashers, stoves, ranges and refrigerators, telephones, air conditioning and heating equipment, doors, screens, windows, to include exterior and interior of all glass and screen surfaces, lamps, interior and exterior grouting and/or caulking, and all other Accessories appurtenant to the Home.
- (f) Mechanic's and Materialmen's Liens. No labor performed or materials furnished and incorporated in a Home, notwithstanding the consent or request of the Owner, his agent, contractor or subcontractor, shall be the basis for filing of a lien against the Common or Limited Areas owned by such other Owners. Each Owner shall indemnify and hold harmless each of the other Owners from and against all liabilities arising from the claim of any lien against the Home of any other Owner or against the Common or Limited Areas for construction performed or for labor, materials, services or other products incorporated in the Owner's Home at such Owner's request.
- (g) Statement of Assessments. Upon the written request of any Owner or any lienholder or prospective lienholder of a Home, the Association, by its Board of Directors, shall issue a written statement setting forth the unpaid assessments if

any, with respect to the subject Home, the amount of the periodic assessments, the date of such assessment and the due date, credit for advance payments or for prepaid items, including but not limited to, insurance premiums, which shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten (10) days, all unpaid assessments which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

The purchaser, donee or other transferee of a Home, by deed or other writing (herein called "Grantee"), shall be jointly and severally liable with the transferor of such Home (herein called "Grantor") for all unpaid assessments against the latter for his proportionate share of the Common expenses up to the time of the grant or conveyance, without prejudice to the Grantee's right to recover from Grantor the amounts paid by the Grantee, but such grantee shall be personally liable only if he expressly assumes such liability. The Grantee shall be entitled to a statement by the Board of Directors setting forth the amount of the unpaid assessments, if any, with respect to the subject Home, the amount of the current periodic assessment and the date such assessment becomes due, as well as any credit for advance prepayments or for prepaid items, including, but not limited to, insurance payments. This statement shall be conclusive upon the Association. Unless such request for a statement of indebtedness shall be complied with within ten (10) days of such request, such Grantee shall not be liable for, nor shall the Home conveyed be subject to a lien for any unpaid assessment against the subject Home accruing prior to such 10 day period.

ARTICLE XXIII **Restrictions on Use**

- (a) Use Restrictions. The following restrictions on the use and enjoyment of the Home, Common Areas, Limited Areas and the Property shall be applicable to COVINGTON HOMESTEADS CONDOMINIUMS, and in addition to those set forth in the Restated Declaration. These are as follows:
- (i) All Homes shall be used exclusively for residential purposes and the occupancy for a single family and their guests and invitees;
 - (ii) No additional buildings shall be erected or located on the Tract other than the Buildings designated in the Restated Declaration and shown on the Home Floor Plans, without the consent of the Board of Directors;
 - (iii) Nothing shall be done or kept in any Home or in the Common Areas or Limited Areas which will cause an increase in the rate of insurance on any Building or the contents thereof. No Owner shall permit anything to be done or kept in his Home or in the Common Areas or Limited Areas which will result in a cancellation of insurance on any Building or contents thereof, or which would be in violation of any law or ordinance.

- (iv) No waste shall be committed in the Home, Common Areas or Limited Areas.
- (v) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls of a Building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs of any other parts of any Building except those items installed by Declarant without the prior consent of the Board.
- (vi) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Home or in the Common Areas or Limited Areas, except that small pet dogs, cats or customary house-hold pets may be kept in a Home, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. Pets shall be taken outdoors only under leash and while attended by its owner, and an Owner shall be fully liable for any damage to the Common Areas or Limited Areas caused by his pet. The tethering of pets in an unfenced area does not constitute "attended." Pets should be walked in an area not common to residents, and pet leavings on the main grounds and walks should be picked up by the pet's owner and disposed of in a proper receptacle. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time. Any pet which, in the judgment of the Board, is causing or creating a nuisance or unreasonable disturbance or noise, shall be permanently removed from the Property upon ten (10) days' written notice from the Board to the respective Owner.
- (vii) Nothing shall be done or permitted in any Home which will impair the structural integrity of any Building or which would structurally change any Building, except as otherwise provided in the Restated Declaration or the By-Laws; nor shall the premises be used in any unlawful manner or in any manner to cause injury to the reputation of the Home or to be a nuisance, annoyance, inconvenience, or damage to other tenants of the Building or neighborhood, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons.
- (viii) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on any parts of the Common Areas and Limited Common Areas. The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials.
- (ix) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Property.

- (x) No "for sale", "for rent" or "for lease" signs or other window or advertising display shall be maintained or permitted on any part of the Property or any Home without the prior consent of the Board; provided, however, that the right is reserved by the Board to place or allow to be placed, "for sale" or "for lease" signs on or about any unsold or unoccupied Homes.
- (xi) All Owners and members of their families, their guests, or invitees, and all occupants of any Home or other persons entitled to use the same and to use and enjoy the Common Areas or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Areas and Limited Areas.
- (xii) No boats, campers, trailers of any kind, buses, trucks, mobile homes, motorcycles, minibikes, or any other unconventional vehicles of any description, or any other sporting paraphernalia, shall be permitted, parked or stored anywhere within the Property; provided, however, that nothing herein shall prevent the parking or storage of such vehicles completely enclosed within a garage, subject to the provisions of subparagraph (a)(iii) above.
- (xiii) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas or Limited Common Areas, except with express permission from the Board, which consent may not be unreasonably withheld. An Owner may, however, plant trees, landscape and do gardening around the immediate perimeter of a Home, as defined in subparagraph (a)(xiv) below, subject to the Owner's obligation for maintenance as set forth in the same subparagraph below.
- (xiv) Notwithstanding their definition as Common Areas or Limited Common Areas, or any other provisions of the Restated Declaration or By-Laws, the following are to be maintained and repaired by the Owner for which their use is primarily intended, and if not maintained and repaired satisfactorily by the Owner, then, at the discretion of the Board of Directors, they may be maintained, repaired or replaced by the Association, through its Board of Directors, with the cost assessed against the Owner and the ability of a lien to be placed against a Home pursuant to Article XXII(d):
 - i. Patios;
 - ii. Porch screens;
 - iii. Pools (swimming, garden, or fish);
 - iv. Fences and walls (including retaining walls);
 - v. Grills;
 - vi. Outside lighting attached to a Home;

- vii. Air conditioning units;
- viii. Utilities within the confines of a Home;
- ix. Lighting (garden, sidewalk, or patio);
- x. Gardens and plantings around the immediate perimeter of a Home, except to the extent provided by the Association's annual budget ("immediate perimeter" means a reasonable expanse contiguous to the foundation of a Home); and
- xi. Roofs, bricks, wood siding, trim, window, door frames and other improvements comprising the exterior of the Owner's Home (the "Exterior Home Improvements"), which maintenance and repair specifically includes, but is not limited to, the repainting and restaining of the wooden surfaces of the Exterior Home Improvements with paint and stain having the same color, in equivalent or better quality, as that used or required to be used, in repainting and restaining the exterior portions of all the other Homes in the Covington Homesteads Condominiums Horizontal Property Regime which are deemed to be in compliance with such guidelines and standards as determined by the Association's Board of Directors from time to time. All repainting and restaining shall be done not less frequently than is reasonably necessary to maintain the external beauty and preserve the physical condition of such exterior of an Owner's Home and to assure its compatibility with the appearance and condition of the other Homes in the Regime, or as requested from time to time by the Association's Board of Directors.

- (b) Right of Entry. An Owner or occupant of a Home hereby grants the right of entry to the Managing Agent or any other person authorized by the Board in case of any emergency originating in or threatening his Home, whether the Owner is present at the time or not. In case of emergencies, such right of entry shall be immediate.
- (c) Right of Board to Adopt Rules and Regulations. The Board may promulgate such additional rules and regulations regarding the operation of the Property, including but not limited to the use of the Common Areas and Limited Areas, as it may deem necessary from time to time, and such rules as are adopted may be amended by a vote of a majority of the Board. The Board shall cause copies of such rules to be delivered or mailed promptly to all Owners.

ARTICLE XXIV
Amendment of Restated Declaration

Amendments to this Restated Declaration shall be proposed and adopted in the following manner:

- (a) Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered.
- (b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or the Owners of at least a majority of the Percentage Vote.
- (c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly held in accordance with the provisions of the By-Laws.
- (d) Adoption. Any proposed amendment to this Restated Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the Percentage Vote. In the event any Home is subject to a mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its same mortgage interest to the Board of Directors in accordance with the provisions of the By-Laws.
- (e) Special Amendments. No amendment to this Restated Declaration shall be adopted which changes (1) the Percentage Interest with respect to any Home or the applicable share of an Owner's liability for the Common Expenses, without the approval of one hundred percent (100%) of the Co-Owners, except as otherwise provided in this Restated Declaration.
- (f) Recording. Each amendment to the Restated Declaration shall be executed by the President and Secretary of the Association, and shall be recorded in the Office of the Recorder of Allen County, Indiana, and such amendment shall not become effective until so recorded.

ARTICLE XXV **Acceptance and Ratification**

All present and future Owners, Mortgagees, tenants and occupants of the Homes shall be subject to and shall comply with the provisions of this Restated Declaration, the Act, the By-Laws appended hereto, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Home shall constitute an agreement that the provisions of this Restated Declaration, any Supplemental Restated Declaration, the Act, the By-Laws and any rules and regulations adopted pursuant thereto, as each may be amended from time to time are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Home or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Home or Homes or any part of the Property in any manner shall be subject to the Restated Declaration, the

Act, the By-Laws, and the rules and regulations applicable thereto as each may be amended from time to time.

ARTICLE XXVI

Negligence

Each Owner shall be liable for the expenses of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association.

ARTICLE XXVII

Costs and Attorney's Fees

In any proceeding arising because of failure of an Owner to make any payment required or to comply with any provision of this Restated Declaration, the Act, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Association shall be entitled to recover from said Owner its reasonable attorneys' fees incurred in connection with such default or failure.

ARTICLE XXVIII

Waiver

No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or Limited Areas or by abandonment of his Home.

ARTICLE XXIX

Severability Clause

The invalidity of any covenant, restriction, condition, limitation or other provision of this Restated Declaration or the By-Laws filed herewith shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Restated Declaration or the attached By-Laws.

ARTICLE XXX

Private Streets

The platted streets known as Wind Pump Road and Little River Run shall be private easements for the benefit of all lot Owners in the Property. Each Owner, their successors in interest, their invitees, and all public and quasi-public parties, including by way of illustration and not by way of limitation, fire, law enforcement, emergency, school, public utility, mail and delivery vehicles, shall have a perpetual right and easement for the purpose of ingress to and egress from the Property. The repair, maintenance and reconstruction of said streets and rights-of-way shall be borne equally by the Owners as provided in Article XV.

ARTICLE XXXI
New Construction; Security Deposit

It shall be the joint and several obligation of any Owner or prospective Owner who constructs a Home on an unimproved lot and the principal contractor of such Home (herein collectively referred to as the Obligors) to notify the Association of the proposed construction of such Home, and at the same time, which time shall be at least seven (7) days preceding such construction, to post a three thousand dollar (\$3,000.00) cash security deposit with the Treasurer of the Association. The purpose of the cash deposit is to assure that the Obligors will: (a) clean the private streets at least twice during the course of construction and a third time following completion of construction, and (b) repair any damage to other Homes or to Common Areas, Limited Common Areas or private streets caused by or arising out of such construction. Following construction of such Home, the Board of Directors of the Association shall return all of said security deposit to the Obligors unless Obligors have failed to clean the private streets or repair any damage as provided herein to the satisfaction of the Board of Directors, in which event the Board may retain all or such portion of the security deposit as the Board deems necessary to provide and pay for the Obligor's unsatisfied duties.

ARTICLE XXXII
Replacement of Original Declaration

Upon the execution and recording of this Restated Declaration, the Restated Declaration, and all future amendments thereto, shall replace and supercede all terms, provisions, covenants, and conditions of the Original Declaration, it being the intention and agreement of all the Owners that the Restated Declaration, and all future amendments thereto, be the governing document(s) of the Covington Homesteads Condominiums, without reference or regard to any other consistent or inconsistent term, provision, covenant, or condition of the Original Declaration.

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