

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
ARLINGTON MEADOWS

THIS DECLARATION (the "Declaration"), is made as of the 18th day of May, 1995, by DURA DEVELOPMENT CORPORATION, an Indiana corporation (hereinafter referred to as "Declarant").

RECITALS

A. Declarant, as the owner of the real estate described on Exhibit A attached hereto desires to impose upon and subject such real estate to mutual and beneficial restrictions, covenants, conditions and charges under a general plan or scheme of improvement for the benefit and complement of the lots and lands in such real estate and future home owners thereof.

B. Such real estate and any additional real estate subjected to this Declaration pursuant to the terms hereof, when subdivided and developed, will be known as Arlington Meadows.

DECLARATION

NOW, THEREFORE, Declarant, as the owner of the real estate described on Exhibit A attached hereto, hereby declares that all of such Real Estate shall be held, occupied, sold, conveyed, hypothecated or encumbered, leased, rented, used, and improved subject to the following easements, restrictions, covenants, conditions and charges (hereinafter referred to as the "Restrictions"), all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Real Estate (as hereinafter defined), and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole and of each of said lots situated therein. All of the Restrictions shall run with the land and shall be binding upon Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the Real Estate or any part or parts thereof subject to this Declaration, and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to the Real Estate.

ARTICLE I

DEFINITIONS AND APPROVALS

Section 1.1 Definitions. The following are the definitions of the terms as they are used in this Declaration:

- a. "Association" shall mean "Arlington Meadows Homeowner's Association, Inc.", its successors and assigns, which has been or will be created as an Indiana not-for-profit corporation. Its membership shall consist of Owners who pay mandatory assessments for insurance and taxes, landscape maintenance, fertilizing and weed control of the Common Area.
- b. "Board of Directors" shall mean the Board of Directors of Arlington Meadows Homeowner's Association, Inc.
- c. "Common Area" shall mean those areas designated as Common area on a plat and set aside for conveyance to the Association.
- d. "Development" shall mean the Real Estate.
- e. "Development Date" shall mean the date upon which dwellings have been substantially completed on all lots in the Development.

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- f. "Lot" shall mean any parcel of the Real Estate described as such and numbered upon a Plat.
- g. "Mortgagee" shall mean any institutional holder, insurer or guarantor of any first mortgage on any Lot.
- h. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to a Lot, including contract sellers, but excluding those persons having such interest merely as security for the performance of an obligation. The term "Owner" shall include the Declarant as the record owner of a Lot.
- i. "Plat" shall mean a subdivision plat of the Development or a part thereof which is recorded in the Office of the Recorder of Marion County, Indiana, as the same may be hereafter supplemented by law or pursuant to this Declaration.
- j. "Real Estate" shall mean the real estate described in Exhibit A attached hereto.

ARTICLE II

CHARACTER OF THE DEVELOPMENT

Every numbered lot in the Development, unless it is otherwise designated by Declarant, is a residential lot and shall be used exclusively for single family residential purposes. All tracts of land designated on a Plat as Common Area shall be used in a manner consistent with applicable zoning and the use designated by such Plat.

ARTICLE III

RESTRICTIONS CONCERNING SIZE, SETBACK PLACEMENT AND MAINTENANCE OF DWELLING HOUSES AND OTHER STRUCTURES

Section 3.1 Diligence in 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. Every building whose construction or placement on any lot is begun shall be completed within nine (9) months after the beginning of such construction or placement.

Section 3.2 Maintenance of Lots and Improvements. The Owner of a Lot shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly; and, specifically, such Owner shall:

- a. Mow the lot and remove weeds and underbrush at such times as may reasonably be required in order to prevent the unsightly growth of vegetation and noxious weeds.
- b. Remove all debris and rubbish.
- c. Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development.
- d. Cut down and remove dead trees.
- e. Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

f. Within sixty (60) days following completion of a house on a lot, landscape the lot, weather permitting, in accordance with the Restrictions.

An Owner's obligations hereunder shall not be relieved by the failure of the Association to provide any of such services for the Common Area, as provided for hereunder.

Section 3.3 Declarant's Right to Perform Certain Maintenance. In the event that the Owner of any Lot shall fail to maintain his or her Lot and any improvements situated thereon in accordance with the provisions of these Restrictions, Declarant shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements thereon, if any, conform to the requirements of these Restrictions. The cost therefor to Declarant shall be collected in any reasonable manner from Owner. Neither Declarant nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder. Upon and after the Development Date, the Association shall succeed to the rights of the Declarant hereunder.

ARTICLE IV

COMMON AREA

Section 4.1 Certain Obligations and Access Rights to the Common Area.

a. Except as otherwise set forth in this Declaration, the Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the management and control, for the exclusive benefit of the Owners as provided herein, of all of the Common Area and for the maintenance of the same in good, clean, attractive, safe and sanitary condition, order and repair.

b. The Association shall have and is hereby granted a general right of access and easement to all of the Common Area and across the Lots, at reasonable times and at any time in case of emergency, as reasonably required by its officers, directors, employees and their agents and independent contractors, to the full extent necessary or appropriate to perform its obligations and duties as set forth in this Declaration. The easements and rights specified herein also are reserved for the benefit of Declarant so long as Declarant owns any portion of the Real Estate. This blanket easement may only be used where any defined ingress and egress easement to the Common Area is inadequate for the performance of the obligations and duties set forth in this Declaration.

Section 4.2 Easements Across the Common Area. The Association shall have the right to grant further reasonable utility easements across and through the Common Area for the benefit of its members.

Section 4.3 Dedication of Common Area. The Association shall have the right 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 Members (as hereinafter defined) or otherwise allowed pursuant to this Declaration, as amended, provided that no such dedication or transfer, except as allowed pursuant to this Declaration, shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of Members has been recorded.

ARTICLE V
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 5.1 Membership. Every Owner shall be a member of the Association (the "Members"). Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 5.2 Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant. Class A 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 such event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease on the happening of either of the following events, whichever occurs earlier:

- a. when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- b. on December 31, 2000.

Section 5.3 Board of Directors. The Members shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association. Directors need not be Members of the Association.

Section 5.4 Professional Management. No contract or agreement for professional management of the Association nor any other contract between Declarant and the Association shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause without the payment of any termination fee by written notice of ninety (90) days or less.

Section 5.5 Responsibilities of the Association.

- a. The Association shall maintain and repair the Common Areas, including improvements thereon.
- b. The Association shall provide for the mowing of the Common Area's grass.
- c. The Association shall provide for the operation of any facilities located or to be located within the Common Area.
- d. The Association shall maintain all landscaping within the Common Area.
- e. The Association may contract for management of the Common Area.

Section 5.6 Association Maintenance. The Board of Directors may adopt such other rules and regulations concerning maintenance, repair, use and enjoyment of the Common Area as it deems necessary. If, due to the willful, intentional or

negligent acts or omissions of an Owner or a Member of his or her family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Area or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the expense of the Association, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's lot is subject.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 6.1 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each lot owned within the Development, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- a. regular annual assessments or charges (for maintenance, repairs and ordinary operating expenses); and
- b. special assessments for capital improvements and operating deficits.

Such assessments will be established and collected as hereinafter provided. The annual and special assessments payable in respect of a lot, together with interest, costs, and reasonable attorneys' fees, shall be a charge on such lot and shall be a continuing lien upon and against such lot. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successor in title unless expressly assumed by them.

Section 6.2 Purpose of Assessments. The regular annual assessments levied by the Association shall be used exclusively, in the reasonable discretion of the Board of Directors, to promote the health, safety and welfare of the residents in the Development, for the improvement, operation and maintenance of the Common Area and street lights (if any); for the performance of any obligations relative to street lights in the Development, if any, not otherwise maintained or paid for by any governmental entity, for the performance of the obligations and duties of the Association and for other purposes only as specifically provided for herein. A portion of the regular annual assessments (in amounts determined in the reasonable discretion of the Board of Directors) shall be set aside or otherwise allocated in a reserve fund for the purpose of providing repair and replacement of the Common Area and any capital improvements to the Common Area which the Association is required to maintain.

Section 6.3 Maximum Annual Assessments.

a. Until January 1 of the year immediately following the conveyance of the first lot to an Owner, the maximum regular annual assessment on any lot conveyed by Declarant shall not exceed Fifty Dollars (\$50) per lot.

b. From and after January 1 of such year, the maximum regular annual assessment may be increased each calendar year by no more than Twenty Percent (20%) above the maximum regular annual assessment for the previous year, without a vote of the Members.

c. From and after January 1 of such year, the maximum regular annual assessment may be increased each calendar year by more than Twenty Percent (20%) above the maximum regular annual assessment for the previous year, with the approval of two-thirds (2/3) of those Members of each class of Members who cast votes in person or by proxy, at a meeting duly called for this purpose.

d. The Board of Directors from time to time may fix the regular annual assessment, without any vote of the Members, at an amount not in excess of the maximum provided for in this Section 6.3.

Section 6.4 Special Assessments for Capital Improvements and Operating Deficits.
In addition to the regular annual assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement to or for the Common Area or for operating deficits which the Association may from time to time incur, provided that any such assessment shall have the assent of two-thirds (2/3) of those Members of each class of Members who cast votes in person or by proxy at a meeting duly called for this purpose.

Section 6.5 Notice and Quorum for Any Action Authorized Under Sections 6.4 and 6.5. Written notice of any meeting called for the purpose of taking any action authorized under Section 6.4 or 6.5 shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6.6 Uniform Rate of Assessment. Regular annual assessments and special assessments for capital improvements and to recover operating deficits shall be fixed at a uniform rate for all Lots; provided, however, that no assessment (regular or special) shall be payable in respect of any Lot owned by Declarant or any individual or entity purchasing a Lot solely for the purpose of construction of a for-sale residence thereon (a "Builder") on a Lot owned by it until such Lot has been conveyed to an owner other than the Declarant or such Builder, or the Lot and residence thereon is leased to an individual or entity for use as a residence. No Lot shall be assessed a regular annual assessment or special assessment in excess of that assessed any other Lot.

Section 6.7 Date of Commencement of Annual Assessments; Due Dates. Except as provided in Section 6.6, the regular annual assessment provided for herein shall commence for each Lot on the date of conveyance of such Lot to an Owner, which assessment shall be pro-rated according to the number of days remaining in the calendar year of the conveyance. The Board of Directors shall fix any increase in the amount of the annual assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every Owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

Section 6.8 Effect of Nonpayment of Assessments; Remedies of the Association. If any assessment is not paid on the date when due, then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on such Lot, binding upon the then Owner, his or her heirs, devisees, successors and assigns. The personal obligation of the then Owner to pay such assessments due prior to transfer, however, shall remain his or her personal obligation and shall not pass to his successors in title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the date when due, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, or both. In such event, there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action; and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action in favor of the prevailing party. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his or her Lot.

Section 6.9 Subordination of the Lien to Mortgage, Sale or Transfer. The lien of the assessments provided for herein payable in respect of a Lot shall be subordinate to the lien of any mortgage on such Lot held by a Mortgagee. The sale or transfer of any Lot pursuant to the foreclosure of any mortgage held by a Mortgagee on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any Lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any Lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to Section 6.7 hereof, as to whether or not such assessments have been paid.

Section 6.10 Declarant's Responsibility to Cover Deficits. The Declarant shall cover any deficit or shortage in the funds necessary to operate the Association that may arise until such time as control of the Association is transferred to the Class A Members.

ARTICLE VII

GENERAL PROHIBITIONS

Section 7.1 Docks and Piers. No Owner shall construct on his or her lot or on the Common Area abutting such lot, any dock, pier or other structure which extends into any retention pond forming a part of the Common Area.

Section 7.2 Water Retention or Detention Areas. No Owner shall have access to the water retention or detention areas (the "Detention Ponds") in the Common Area, except through such Owner's Lot. No one shall do or permit any action or activity which could result in pollution of any detention or retention ponds, diversion of water, elevation of pond level, earth disturbance resulting in silting or any other conduct which could result in an adverse effect upon water quality, drainage or proper pond management. The Detention Ponds may not be used for swimming.

Section 7.3 Rules and Regulations. The Board of Directors from time to time may promulgate further rules and regulations concerning the Common Area and access to and use of the Detention Ponds. A majority of those Owners voting at a meeting called for the purpose may rescind or modify any rule or regulation.

adopted by the Board of Directors. Copies of all rules and regulations shall be furnished by the Board of Directors to all Owners, at the Owner's last known address, prior to the time when the same shall become effective. The Association shall have current copies of the Declaration, Articles and By-Laws, and other rules concerning the Development as well as its own books, records and financial statements available for inspection by Owners or by holders, insurers and guarantors of first mortgages, that are secured by lots in the Development. These documents shall be available during normal business hours or under other reasonable circumstances.

ARTICLE VIII INSURANCE

Section 8.1 Casualty Insurance On Insurable Common Area. The Association shall keep any insurable improvements and fixtures of the Common Area owned by the Association, as opposed to property designated as Common Area for the purpose of maintenance only, insured for one hundred percent (100%) of their insurable value against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as are customarily covered for similar types of projects, including those covered by the standard "all risk" endorsements. The Association may also insure any other property whether real or personal, owned or maintained by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to such Common Area owned by the Association and property maintained by the Association shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses included in the regular monthly assessments made by the Association.

Section 8.2 Liability Insurance. The Association shall purchase a master comprehensive general liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive general liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Association and shall contain in the policy or an endorsement thereto a "severability of interest" endorsement precluding the insurer's denial of an Owner's claim because of negligent acts by the Association or other Owners. It shall also cover all Common Area and any other areas under the Association's control or supervision.

Section 8.3 Fidelity Bonds. The Association shall have blanket fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services. The Association bonds shall name the Association as the obligee and the premium shall be paid as a common expense by the Association. Any management agent that handles funds for the Association shall be covered by its own fidelity bond, which must provide the same coverage required of the Association. The Association shall be named as an additional obligee in the management agent's bond. The fidelity bond shall cover the maximum funds in the management agent's custody of the Association or its management agent at any time while the bond is in force, but must be no less than the sum of three (3) months of monthly regular assessments, plus reserves. If available, the fidelity bonds must include a provision that provides for ten (10) days written notice to the Association or insurance trustee before the bond can be cancelled or substantially modified for any reason.

Section 8.4 Miscellaneous Insurance Provisions. The Association shall obtain any other insurance required by law to be maintained, including but not limited to worker's compensation insurance, and such other insurance and additional coverage as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of the Association, its Board of Directors and any managing agent acting on behalf of the Association. The insurance required hereunder or by the Board of Directors shall not have deductibles in excess of Ten Percent (10%) of the applicable amount of coverage. Funds for any such deductibles shall be set aside or otherwise allocated in a reserve fund so designated from the monthly regular assessments in amounts determined in the reasonable discretion of the Board of Directors.

Section 8.5 Casualty and Restoration. Damage to or destruction of any Common Area actually owned by the Association due to fire or any other casualty or disaster to property maintained by the Association shall be promptly repaired or reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose. For purposes of this Section, repair, reconstruction and restoration shall mean construction or rebuilding of the damaged property to as near as possible the same condition as it existed immediately prior to the damage or destruction, with the same or a similar type of architecture.

Section 8.6 Inadequacy of Insurance Proceeds. If the insurance proceeds received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area actually owned by the Association or any improvements damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the Association which shall then have the right to levy a special assessment against all Lots for such deficiency.

Section 8.7 Surplus of Insurance Proceeds. In the event that there is any surplus of insurance proceeds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Association as a reserve or may be used in the maintenance and operation of the Common Area. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against any Owner for committing willful or malicious damage.

ARTICLE IX

MORTGAGEES

Section 9.1 Notice to Mortgagees. The Association, upon request, shall provide to any Mortgagee, a written certificate or notice specifying unpaid assessments and other defaults of the Owner of the Lot on which such Mortgagee holds its first mortgage, if any, in the performance of such Owner's obligations under this Declaration, the Articles of Incorporation of the Association, its By-Laws or any other applicable documents, which default has not been cured within sixty (60) days. A reasonable charge may be made by the Association for the issuance of any such certificate or notice, and any such certificate properly executed by an officer of the Association shall be binding upon the Association, as provided in Section 6.7.

Section 9.2 Condemnation and Insurance Awards. No provisions of this Declaration, or any amendment thereto, shall give an Owner, or any other party, priority over any rights of the Mortgagee of a Lot pursuant to its mortgage in the case of a distribution of such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 9.3 Unpaid Dues or Charges. Any Mortgagee who obtains title to a Lot and the dwelling thereon, pursuant to the remedies in the mortgage or through foreclosure, will not be liable for the Lot's unpaid dues or charges accrued before the acquisition of the title to the Lot by the Mortgagee.

ARTICLE X

GENERAL PROVISIONS

Section 10.1 Effect of Becoming an Owner. The Owner of any Lot subject to these Restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. By acceptance of such deed or execution of the such contract, the Owner acknowledges the rights and powers of Declarant with respect to these Restrictions, and also, for themselves, their heirs, personal representative, successors and assigns, such Owners covenant and agree and consent to and with Declarant and to and with the Owners and subsequent owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

Section 10.2 Titles. The underlined titles preceding the various paragraphs and subparagraphs of the Restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provisions of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

Section 10.3 Duration. The foregoing covenants, conditions and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until December 31, 2050, at which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless by vote of those persons who are then the Owners of a majority of the Lots, it is agreed to change the covenants, limitations and restrictions in whole or in part.

Section 10.4 Right of Enforceability. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the Association or any Owner and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees, title search costs, expert witness costs and the costs and all other expenses incurred as a result thereof.

The appropriate governmental body, its successors and assigns, shall have no obligation to enforce any covenants, commitments, restrictions, or other limitations contained herein. Nothing herein shall be construed to prevent or prohibit the appropriate governmental body from enforcing conditions attached to approval of a Plat of Arlington Meadows.

Section 10.5 Severability and Waiver. Invalidation of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel

of that person to assert any right available to him or her upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

Section 10.6 Amendment. During the first twenty (20) years following its recordation, this Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of Marion County, Indiana, approved and signed by at least ninety percent (90%) of the then Owners, and thereafter by an instrument signed by at least seventy-five percent (75%) of the then Owners; provided, however, that, notwithstanding anything contained herein to the contrary, any amendment to this Declaration which would amend this Section 10.6 or which would allow the assessors a regular annual assessment or special assessment in excess of that assessed any other lot shall require the approval of one hundred percent (100%) of the then Owners. None of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Except as prohibited below, this Declaration may also be amended unilaterally by Declarant (including amending the Real Estate to include the real estate described in Exhibit B hereto) if it then has any ownership interest in the Development, at any time within two (2) years after the recordation hereof. Any amendment must be recorded. Neither the Association, the Owners nor Declarant shall effect any of the following changes without the prior written approval of two-thirds (2/3) of the Mortgagees of the Lots (based upon one (1) vote for each mortgage owned) and two-thirds (2/3) of the Owners:

- a. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owner, directly or indirectly by the Association for the benefit of the Owners. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area is not a transfer in the meaning of this subsection;
- b. By act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the maintenance of the Common Area;
- c. Fail to maintain fire and extended coverage on insurable Common Area owned by the Association on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement costs);
- d. Use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement, or reconstruction of the Common Area owned by the Association;
- e. Change the voting rights, assessments, assessment liens or subordination of assessment liens, except as provided herein.
- f. Change the manner in which reserves for maintenance, repair and replacement of Common Areas have been set up and previously maintained by the Association;
- g. Change the rights to the use of the Common Area, except as provided for in this Declaration;
- h. Any requirements for insurance or fidelity bonds set forth in this Declaration;
- i. Any imposition of any restriction on an Owner's right to sell or transfer such Owner's dwelling unit;
- j. Restoration and repair of the Common Area (after a hazard damage or partial condemnation) in a manner other than specified in the Declaration;

k. Any action to terminate the legal status of the Development after substantial destruction or condemnation occurs;

l. Any provision that expressly benefits mortgage holders, insurers or guarantors;

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

n. Any termination of legal status of the Development for reasons other than substantial destruction or condemnation of the Development.

If an addition or amendment is not considered as a material change, such as the correction of a technical error or the clarification of a statement within the Declaration, the Articles of Incorporation of the Association, the By-Laws of the Association or other constituent documents, there shall be an implied approval to be assumed when an eligible mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after proposal is made.

Section 10.7 Assignment. Declarant may assign or otherwise transfer any and all of his rights hereunder as Declarant.

Section 10.8 Condemnation, Destruction or Liquidation. The Association shall be designated to represent the Owners in any proceedings, negotiations, settlements or agreements for the handling of any losses or proceeds from condemnation, destruction or liquidation of all or a part of the Common Area, or from the termination of the Development. Each Owner, by the acceptance of a deed, appoints the Association as his or her attorney-in-fact for this purpose. Proceeds from the settlement will be payable to the Association for the benefit of the Owners and their mortgage holders. Any distribution of funds in connection with the termination of the Development shall be made on a reasonable and an equitable basis.

Section 10.9 Conflict with Plat Provisions. The provisions of each Plat are hereby incorporated into this Declaration. Should the other provisions of this Declaration conflict with any provisions of a Plat, the other provisions of this Declaration shall control. To the extent reasonable, the provisions of each Plat and this Declaration shall be interpreted to be consistent with each other.

IN TESTIMONY WHEREOF, witness the signature of Declarant as of the date first hereinabove written.

"DECLARANT"

DURA DEVELOPMENT CORPORATION,
an Indiana corporation

By:  _____
Paul E. Shoopman, President

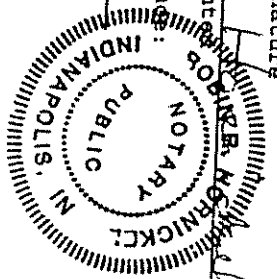
STATE OF INDIANA)
COUNTY OF Madison) SS:

Before me, a Notary Public in and for said County and State, personally appeared Paul E. Shoopman, known to me to be the president of Dura Development Corporation, and acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions for and on behalf of said corporation.

Witness my hand and Notarial Seal, this 17 day of May, 1995.

My Commission Expires:
5-23-97

Robert R. Hines
Notary Public - Signature
Robert R. Hines
Notary Public - Printed Name
My County of Residence: Johnson



X
This instrument prepared by Dennis A. Johnson, Attorney At Law, JOHNSON, SMITH, PENCE, DENSBORN, WRIGHT & HEATH, One Indiana Square, Suite 1800, Indianapolis, Indiana 46204.

ARLINGTON MEADOWS - SECTION II
LAND DESCRIPTION

A part of the Northeast Quarter of Section 34, Township 15 North, Range 4 East of the Second Principal Meridian, Marion County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Northeast Quarter; thence South 68°55'21" West (assumed bearing) along the South line of said Northeast Quarter a distance of 805.00 feet to the Southwest corner of Arlington Meadows, Section I as per plat thereof recorded as Instrument No. 93-94464 in the Office of the Recorder of Marion County, Indiana, and the POINT OF BEGINNING; thence continuing South 88°55'21" West along said South line a distance of 888.20 feet to an iron pin found; thence North 00°00'00" East parallel with the East line of said Northeast Quarter a distance of 850.85 feet to an iron pin found on the South right-of-way line of I-465 (Project No. I-465-4(61) 1959), said point being on a curve concave Northwestwardly having a central angle of 02°57'43" the radius point of which bears North 19°31'58" West a distance of 7261.97 feet; thence Northeastwardly along said curve and along said right-of-way line an arc distance of 375.40 feet to a point that bears South 22°29'41" East a distance of 7261.97 feet from said radius point; thence South 54°42'20" East a distance of 84.96 feet; thence South 29°41'59" West a distance of 63.37 feet; thence South 65°53'42" East a distance of 150.00 feet to a curve concave Southeastwardly having a central angle of 24°06'18" the radius point of which bears South 65°53'42" East a distance of 175.00 feet; thence Southwestwardly along said curve an arc distance of 73.62 feet to a point that bears North 90°00'00" West a distance of 175.00 feet from said radius point; thence South 00°00'00" West a distance of 221.87 feet to the point of curvature of a curve concave Northeastwardly having a central angle of 27°32'43", the radius point of which bears South 90°00'00" East a distance of 125.00 feet; thence Southeastwardly along said curve an arc distance of 60.09 feet to a point that bears South 62°27'17" West a distance of 125.00 feet from said radius point; thence South 27°32'43" East a distance of 118.32 feet to the point of curvature of a curve concave Northwardly having a central angle of 80°30'21", the radius point of which bears North 62°27'17" East a distance of 15.00 feet; thence Southeastwardly and Easterly along said curve an arc distance of 21.08 feet to a point that bears South 18°03'04" East a distance of 15.00 feet from said radius point, said point being the point of reverse curvature of a curve concave Southwestwardly having a central angle of 16°58'25", the radius point of which bears South 18°03'04" East a distance of 227.50 feet; thence Northeastwardly along said curve an arc distance of 67.40 feet to a point that bears North 01°04'39" West a distance of 227.50 feet from said radius point; thence North 88°55'21" East Parallel with the South line of said Northeast Quarter a distance of 238.31 feet to the point of curvature of a curve concave Southerly

EXHIBIT A

having a central angle of 05°46'19", the radius point of which bears South 01°04'39" East a distance of 200.00 feet; thence Easterly along said curve an arc distance of 20.15 feet to a point on the West line of said Arlington Meadows, Section I that bears North 04°41'40" East a distance of 200.00 feet from said radius point; (the following three (3) courses are along the West line of said Arlington Meadows Section I); (1) thence South 07°02'26" East a distance of 56.17 feet; (2) thence South 16°06'49" West a distance of 155.36 feet; (3) thence South 01°04'39" East a distance of 150.00 feet to the point of Beginning. Containing 13.871 Acres (604,214 Square Feet), more or less.

ARLINGTON MEADOWS SECTION THREE
LAND DESCRIPTION

A part of the Northeast Quarter of Section 34, Township 15 North, Range 4 East of the Second Principal Meridian, Marion County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of the Northeast Quarter of said Section 34; thence North 00°00'00" East (assumed bearing) along the East line of said Northeast Quarter a distance of 997.41 feet; thence North 90°00'00" West a distance of 45.00 feet to the Southerly Right-of-Way line of Interstate 465 (Project Number I-465-4 (61) 1959), the following three (3) courses are along said Right-of-Way line; (1) thence North 00°00'00" East parallel with said East line a distance of 208.00 feet; (2) thence North 05°54'47" West a distance of 403.52 feet; (3) thence South 60°11'09" West a distance of 48.67 feet to the Northeast corner of Arlington Meadows Townhomes - Phase One as per plat thereof recorded as Instrument Number 93-18455 in the Office of the Recorder of Marion County, Indiana and the POINT OF BEGINNING of the herein described parcel; thence South 07°17'52" East along the East line of said Arlington Meadows Townhomes - Phase One a distance of 235.11 feet to a point on the Northeastly Right-of-Way line of Victory Court per said Plat, said point being on a curve concave Southeasterly having a radius of 50.00 feet; thence Northwestly, Westerly, Southwesterly and Southeasterly along the Northerly Right-of-Way line of said Victory Court and along said curve through a Central Angle of 194°06'13" & Arc Distance of 169.39 feet (said Arc being subtended by a Chord bearing South 38°17'20" West a distance of 99.24 feet) to the point of reverse curvature of a concave Southwesterly having a Radius of 50.00 feet; thence Southeasterly along the Westerly Right-of-Way line of said Victory Court and along said curve through a Central Angle of 41°24'35" an Arc Distance of 36.14 feet (said arc being subtended by a Chord bearing South 38°03'29" East a distance of 35.36 feet) to the point of tangency of said curve; thence South 17°21'12" East along said Westerly

EXHIBIT A

Arlington Meadows, Section I as per plat thereof recorded as Instrument No. 930094464 in the Office of the Recorder of Marion County, Indiana, and the Southeast corner of Arlington Meadows Section II as per plat thereof recorded as Instrument No. 950025342 in the Office of the Recorder of Marion County, Indiana; (the following three (3) courses are along the common line between said Arlington Meadows Sections I and II); (1) thence North 01°04'39" West a distance of 150.00 feet; (2) thence North 16°06'49" East a distance of 155.36 feet; (3) thence North 07°02'26" West a distance of 56.17 feet to a point on a curve concave Southerly having a central angle of 05°46'19", the radius point of which bears North 04°41'43" East a distance of 200.00 feet from said radius point, said point also being the POINT OF BEGINNING; (the following eleven (11) courses are along the Northerly and Easterly lines of said Arlington Meadows Section II; (1) thence Westerly along said curve an arc distance of 20.15 feet to a point that bears South 01°04'39" East from said radius point; (2) thence South 88°55'21" West a distance of 238.31 feet to the point of curvature of a curve concave Southeasterly having a central angle of 16°58'25", the radius point of which bears North 01°04'39" West a distance of 227.50 feet; (3) thence Southwesterly along said curve an arc distance of 67.40 feet to a point that bears North 18°03'04" West a distance of 227.50 feet from said radius point, said point being the point of reverse curvature of a curve concave Northerly having a central angle of 80°30'21", the radius point of which bears North 18°03'04" West a distance of 15.00 feet; (4) thence Westerly and Northwesterly along said curve an arc distance of 21.08 feet to a point that bears South 62°27'17" West from said radius point; (5) thence North 27°32'43" West a distance of 118.32 feet to the point of curvature of a curve concave Northwesterly having a central angle of 27°32'43", the radius point of which bears North 62°27'17" East a distance of 125.00 feet; (6) thence Northwesterly along said curve an arc distance of 60.09 feet to a point that bears North 90°00'00" West from said radius point; (7) thence North 00°00'00" East a distance of 221.87 feet to the point of curvature of a curve concave Southeasterly having a central angle of 24°06'18", the radius point of which bears North 90°00'00" East a distance of 175.00 feet; (8) thence Northwesterly along said curve an arc distance of 73.62 feet to a point that bears North 65°53'42" West from said radius point; (9) thence North 65°53'42" West a distance of 150.00 feet; (10) thence North 29°41'59" East a distance of 63.37 feet; (11) thence North 54°42'20" East a distance of 84.96 feet to a point on the South right-of-way line of I-465 (Project No. I-465-4(61) 1959), said point being on a curve concave Northwesterly having a central angle of 07°51'57", the radius point of which bears North 22°29'41" West a distance of 7261.97 feet; thence Northwesterly along said curve and along said right-of-way line

EXHIBIT A

Right-of-Way Line a distance of 48.90 feet to the point of curvature of a curve concave Westeryly having a Radius of 125.00 feet; thence Southwesterly along said Right-of-Way Line and along said curve through a Central Angle of 39°09'02" an Arc Distance of 85.41 feet (said arc being subtended by a Chord bearing South 02°13'19" West a distance of 83.76 feet) to the point of compound curvature of a curve concave Northerly having a Radius of 15.00 feet; thence Southwesterly along said Right-of-Way Line through a Central Angle of 92°50'16" an Arc Distance of 24.30 feet (said arc being subtended by a Chord bearing South 68°12'58" West a distance of 21.73 feet) to the intersection of the Westeryly Right-of-Way line of said Victory Court and the Northerly Right-of-Way line of Victory Avenue, said point being the point of reverse curvature of a curve concave Southerly having a Radius of 150.00 feet; thence Westeryly along the North Right-of-Way Line of said Victory Avenue and along said curve through a Central Angle of 45°08'06" and an Arc Distance of 118.16 feet (said arc being subtended by a Chord bearing North 87°55'57" West a distance of 115.13 feet) to the point of tangency of said curve; thence South 69°30'00" West along said Northerly Right-of-Way line a distance of 37.00 feet; thence North 20°30'00" West a distance of 110.00 feet; thence North 20°30'00" West a distance of 48.00 feet; Westeryly line of said Arlington Meadows Townhomes - Phase One; thence North 30°03'14" East along said Westeryly line a distance of 33.10 feet; thence North 28°23'08" West along said Westeryly line a distance of 115.57 feet to said Southerly Right-of-Way line of Interstate 465 and the Northwesterly corner of said Arlington Meadows Townhomes - Phase One, said point being on a curve concave Northwesterly having a Radius of 7,251.97 feet; thence Northeasterly along said Right-of-Way line and the Northerly line of said Arlington Meadows Townhomes - Phase One and along said curve through a Central Angle of 00°36'17" an Arc Distance of 76.64 feet (said arc being subtended by a Chord bearing North 59°20'13" East a distance of 76.64 feet); thence North 60°31'09" East along said Right-of-Way line and the Northerly line of said Arlington Meadows Townhomes - Phase One a distance of 294.70 feet to the Point of Beginning. Containing 2.345 Acres (102,153 Square Feet) more or less.

**RESIDUAL
LAND DESCRIPTION**

A part of the Northeast Quarter of Section 34, Township 15 North, Range 4 East of the Second Principal Meridian, Marion County, Indiana, and Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Northeast Quarter; thence South 88°55'21" West (assumed bearing along the South line of said Northeast Quarter a distance of 805.00 feet to the Southwest corner of

EXHIBIT A

an arc distance of 996.97 feet to a point that bears South 30°21'38" East a distance of 7261.97 feet from said radius point, said point being the Northwest corner of Arlington Meadows Section III, a replat of part of Arlington Meadows Townhomes, Phase I as per plat thereof recorded as Instrument No. 950025343 in the Office of the Recorder of Marion County, Indiana; (the following five (5) courses are along the westerly line of Arlington Meadows Section III) (1) thence South 28°22'08" East a distance of 115.57 feet; (2) thence South 30°03'14" West a distance of 33.10 feet; (3) thence South 20°30'00" East a distance of 89.69 feet; (4) thence North 69°30'00" East a distance of 48.00 feet; (5) thence South 20°30'00" East a distance of 110.00 feet to a point on the Northerly line of Arlington Meadows Townhomes, Phase I as per plat thereof recorded as Instrument No. 930184550 in the Office of the Recorder of Marion County, Indiana; the following two (2) courses are along the Northerly and Westerly line of said Arlington Meadows Townhomes, Phase I; (1) thence South 69°30'00" West a distance of 34.00 feet; (2) thence South 20°30'00" East a distance of 168.32 feet to a point on the Northerly line of Arlington Meadows Section I as per plat thereof recorded as Instrument No. 930094464 in the Office of the Recorder of Marion County, Indiana; the following seven (7) courses are along the Northerly and Westerly line of said Arlington Meadows, Section I); (1) thence South 71°24'47" West a distance of 263.87 feet; (2) thence South 38°16'50" West a distance of 120.00 feet; (3) thence South 24°37'27" West a distance of 66.76 feet; (4) thence South 74°41'09" West a distance of 177.31 feet; (5) thence South 30°58'39" West a distance of 75.00 feet; (6) thence South 04°18'23" East a distance of 136.45 feet; (7) thence South 05°05'23" West a distance of 76.55 feet to the Point of Beginning. Containing 13.470 Acres (586,753 Square Feet), more or less.

desc4\9287res
Arlington Meadows Residual
RFP/bgs 4/12/95

JOHN R. VON ARX
MARION COUNTY AUDITOR
-02192 MAY 1995
BUYER'S ATTORNEY
SUBJECT TO PLAT RECHANGE
FOR TRANSFER

EXHIBIT A

ARLINGTON MEADOWS - SECTION 1
LAND DESCRIPTION

A part of the Northeast Quarter of Section 34, Township 15 North, Range 4 East of the Second Principal Meridian, in Marion County, Indiana, being more particularly described as follows:

BEGINNING at the Southeast corner of said Northeast Quarter of Section 34; thence South 88 degrees 55 minutes 21 seconds West (assumed bearing) along the South line of said Northeast Quarter Section 805.00 feet; thence North 01 degrees 04 minutes 39 seconds West 150.00 feet; thence North 16 degrees 06 minutes 45 seconds East 155.36 feet; thence North 07 degrees 02 minutes 26 seconds West 56.17 feet; thence North 05 degrees 05 minutes 26 seconds East 76.55 feet; thence North 04 degrees 18 minutes 23 seconds West 136.45 feet; thence North 30 degrees 58 minutes 39 seconds East 75.00 feet; thence North 74 degrees 41 minutes 09 seconds East 177.31 feet; thence North 24 degrees 37 minutes 27 seconds East 66.76 feet; thence North 08 degrees 16 minutes 59 seconds East 120.00 feet; thence North 71 degrees 24 minutes 47 seconds East 263.87 feet; thence South 09 degrees 22 minutes 09 seconds East 257.96 feet; thence South 01 degrees 54 minutes 33 seconds West 302.77 feet; thence North 85 degrees 00 minutes 30 seconds East 78.48 feet; thence North 90 degrees 00 minutes 00 seconds East 95.44 feet; thence North 00 degrees 14 minutes 46 seconds West 173.31 feet; thence North 00 degrees 16 minutes 05 seconds West 557.25 feet; thence North 07 degrees 17 minutes 57 seconds West 479.38 feet to the South right-of-way line of I-465 (Project No. 1-465-4(61) 1959); thence the next four (4) courses being along said right-of-way line;

(1) North 60 degrees 11 minutes 09 seconds East 48.67 feet;
(2) South 05 degrees 54 minutes 47 seconds East 403.52 feet;

(3) South 00 degrees 00 minutes 00 seconds East parallel with the East line of said Quarter Section 208.00 feet;

(4) North 90 degrees 00 minutes 00 seconds East 45.00 feet to the East line of said Quarter Section; thence South 00 degrees 00 minutes 00 seconds East along said East line 997.41 feet to the Point of Beginning, containing 13.23 acres, more or less.

Subject to all easements, rights-of-way and restrictions of record.

EXHIBIT B