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DECLARATION OF COVENANTS AND RESTRICTIONS

OF

ARLINGTON MEADOWS TOWNHOMES

PROPERTY OWNERSHIP

PHASE I

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DECLARATION OF COVENANTS AND RESTRICTIONS

Arlington Meadows Townhomes:  
Property Ownership  
Phase I

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DECLARATION OF COVENANTS AND RESTRICTIONS OF  
ARLINGTON MEADOWS TOWNHOMES PROPERTY OWNERSHIP  
PHASE I

THIS DECLARATION made this 11 day of January,  
1993, by DURA BUILDERS, INC., an Indiana corporation  
("Declarant")

W I T N E S S E T H :

WHEREAS, the following facts are true:

A. Declarant is the sole owner in fee simple title to certain real estate located generally southwest of the intersection of I-465 and Arlington Avenue in Marion County, Indiana, more particularly described in the attached Exhibit A, which is incorporated herein by reference (hereinafter referred to as the "Tract" or "Arlington Meadows Townhomes Phase I").

B. Declarant by execution of this Declaration assures that all properties which are conveyed which are a part of the Tract shall be conveyed subject to the terms and conditions of this Declaration, which shall run with the Tract and be binding upon all parties having any right, title or interest in the Tract, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

C. Declarant is also the owner of certain real estate located in Marion County, Indiana, and more particularly described in Exhibit B on which Declarant is developing a single-family detached subdivision ("Subdivision Real Estate"). The Subdivision Real Estate is included in this Declaration for the sole purpose of subjecting the Subdivision Real Estate to the provisions of paragraph 18(f) and as applicable, paragraphs 18(g) and (h) and for no other purpose.

NOW THEREFORE, Declarant hereby makes this Declaration as follows:

1. Definitions. The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

(a) "Additional Tract" means that real estate or any part of it described in Paragraph 24 of this Declaration.

(b) "Applicable Date" means the date determined pursuant to Paragraph 10 of this Declaration.

(c) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association, as hereinafter defined, filed, or to be filed, with the Office of the Secretary of State of Indiana, as the same are or hereafter may be amended from time to time. The Articles of Incorporation are incorporated herein by reference.

(d) "Association" means the Arlington Meadows Townhomes Homeowners Association, Inc., a formed or to-be-formed Indiana not-for-profit corporation, its successors and assigns, whose members shall be the Owners of Lots, or appointees as provided in Paragraph 10 of this Declaration, such Association being more particularly described in Paragraph 10 of this Declaration.

(e) "Board of Directors" or "Board" means the governing body of the Association elected by the Members in accordance with the By-Laws of the Association.

(f) "Building" means any one of the separated structures which has one Dwelling Unit or two or more attached Dwelling Units.

(g) "By-Laws" shall mean the By-Laws of the Association and shall provide for the election of directors and officers and other governing officials of the Association. A copy of the By-Laws is incorporated herein by reference.

(h) "Common Area" means those portions of the Tract, if any, designated on the Final Plat as Common Area and which are for the use, benefit and enjoyment of all Owners.

(i) "Common Expense" means expenses for administration of the Association and expenses for the upkeep, maintenance, repair and replacement of the Common Area, with the exception of the Entrance Area, as herein defined, and all sums lawfully assessed against the Members of the Association.

(j) "Declarant" shall mean and refer to Dura Builders, Inc., an Indiana corporation, and its successors and assigns as a declarant.

(k) "Dwelling Unit" means one of the living units located upon a Lot.

(l) "Entrance Area" means the frontage along Arlington Avenue of both the Tract and the Subdivision Real Estate and the entrance to both the Tract and Subdivision Real Estate from Arlington Avenue.

(m) "Final Plat" means the plat of the Tract prepared by Major Land Surveying, certified by Robert Etter, a registered land surveyor, under date of October 21, 1992 and recorded in the Office of the Recorder of Marion County, Indiana, as Instrument No. 1993-0184550, which is incorporated herein by reference and which consists of Thirty (30) lots numbered 150 to 159 inclusive.

(n) "Arlington Meadows Townhomes Phase I" means the name by which the Tract, as described in Paragraph A above, which is the subject of this Declaration, and which the Association manages, shall be known.

(o) "Lot" means any plot of ground designated as such upon the recorded Final Plat of Arlington Meadows Townhomes Phase I or upon the Recorded Final Plat, if any, of the Additional Tract, or any part thereof and upon which one (1) Dwelling Unit is constructed, is to be constructed or has existed. When Lot is used it shall be deemed to include the Dwelling Unit, if any, located thereon.

(p) "Member" means a member of the Association.

(q) "Mortgagee" means the holder of a first mortgage lien on a Lot.

(r) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.

(s) "Subdivision Owner" means any Owner of a lot located in the Subdivision Real Estate.

(t) "Arlington Meadows Homeowners Association, Inc." means the association or entity designated in the Declaration and responsible for the ownership and maintenance of the Common Area.

(u) "Tract" means the real estate described in Paragraph A above and any additions annexed thereto for which a Final Plat has been or will be recorded in the Office of the Recorder of Marion County, Indiana, pursuant to this Declaration, as amended or supplemented.

2. Declaration. Declarant hereby expressly declares that the Tract shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. Description of Arlington Meadows Townhomes Phase I. Arlington Meadows Townhomes Phase I consists of thirty (30) lots numbered 150 through 159 inclusive and the Common Area as designated on the Final Plat. The Common Area and the size of the Lots are as designated on the Final Plat. The legal description for each Lot in Arlington Meadows Townhomes Phase I shall be as follows:

Lot 150 in the Arlington Meadows, a subdivision in Marion County, Indiana, as per the plat thereof which plat was recorded October 21, 1993 as Instrument Number 1993-0184550, in the Office of the Recorder of Marion County, Indiana.

4. Lots and Easements. The boundaries of each Lot in Arlington Meadows Townhomes Phase I shall be as shown on the Final Plat; provided, however, in the event any vertical boundary line of any Dwelling Unit does not coincide with the actual Lot line because of inexactness of construction, settling after construction or for any other reasons, whether from the initial construction or subsequent reconstruction, the boundary lines shall be deemed to be treated for purposes of occupancy, possession, maintenance, 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 Lot in and to such base line outside the actual boundary line of the Lot. In addition, the driveway to a Dwelling Unit may encroach on an adjacent Lot and permanent easements for such driveway use shall exist in favor of each Lot whose driveway is located outside the actual boundary of such Lot or on an adjacent Lot.

5. Common Area. The Common Area shall be for the common use and enjoyment of the Members, as provided herein, but not for use by the general public.



6. Owners' Easements of Enjoyment of Common Area. Every Owner shall have a non-exclusive right and easement of enjoyment, in common with all Owners, in and to the Common Area, which right and easement shall be appurtenant to and shall pass with title to every Lot.

7. Delegation of Use of the Common Area. Any Member may delegate, in accordance with the By-Laws and any reasonable and non-discriminatory rules and regulations promulgated from time to time by the Association, such Member's right of enjoyment and use of the Common Area to family members, guests, tenants or contract purchasers who reside on any Lot.

8. Easements in Common. Each Owner shall have an easement in common with each other to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, located in any other Dwelling Units or in the Common Area and serving such Owner's Dwelling Unit.

9. Easement for Utilities. An easement is granted to all utilities (including cable companies and the Department of Public Works) and their agents for ingress, egress, installation, replacement, repair and maintenance of such utilities, including but not limited to water, sewers, drainage, gas, telephone, electricity and cable equipment on the Tract; provided, however, nothing herein shall permit the installation of sewers, drainage facilities, electric lines, water lines or other utilities, except as initially designed and approved by Declarant on the Final Plat or as thereafter may be approved by Declarant or by the Board of Directors. By virtue of this easement the electrical and telephone utilities and the cable companies are expressly permitted to erect and maintain the necessary equipment on the Tract and to affix and maintain electrical, telephone and cable equipment, wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Dwelling Units and over, across or under any Lot. In the event any utility furnishing service should request a specific easement by a separate recordable document, Declarant reserves the right to grant such easement on the Tract, without conflicting with the terms of this Paragraph 9. The easements granted herein shall in no way affect any other recorded easement on the Tract.

10. Association; Membership; Voting; Functions

(a) Membership in Association. The person who serves as incorporator of the Association shall be the initial member (the "Initial Member"). Declarant and each Owner of a Lot which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Association and shall remain a Member until such time as his ownership of a Lot ceases. Membership

shall terminate when any Owner ceases to be an Owner, and membership will transfer to the new Owner of the Lot; provided, however, that any person or entity who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a Member until and unless such person or entity realizes upon its security, at which time such person or entity shall automatically be and become an Owner and a Member of the Association.

(b) Voting Rights. The Association shall have two (2) classes of membership, with the following voting rights:

(i) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the Owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Association, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(ii) Class B. Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the resident agent of the Association. Each Class B Member shall be entitled to three (3) votes for each Lot of which it is the Owner on all matters requiring a vote of the Members of the Association. The Class B membership shall cease and terminate upon the Applicable Date, which shall be the first to occur of (i) the date upon which the written resignation of the Class B Members as such is delivered to the resident agent of the Association, (ii) when the total number of votes

outstanding in the Class A membership is equal to or exceeds the total number of votes outstanding in the Class B membership, or (iii) January 31, 2000.

(c) Functions. The Association has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, administration, operation and ownership of the Common Area, if any, and for the maintenance, repair and replacement of such exterior portions of the Dwelling Units and Lots as designated in this Declaration.

11. Board of Directors

(a) Management. The business and affairs of the Association shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless such person is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointed by Declarant as provided in subparagraph (b) of this Paragraph 11.

(b) Initial Board of Directors. The Initial Board of Directors shall be composed of the persons designated in the Articles, to-wit: Paul Shoopman and Kurt Trewartha (herein referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in this Paragraph 11 or any other provisions of this Declaration, the Articles or the By-Laws (i) the Initial Board shall hold office until the Applicable Date, and (ii) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Dwelling Unit by any type of juridical acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date, determined as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which Members of the Association are entitled to vote under the Declaration, the Articles, the By-Laws or otherwise; provided, however, this right to vote granted to Declarant shall

not extend to votes of Members (if a vote is required) on matters of Special Assessments, mortgaging Common Area or merger/consolidation of the Association with another corporation. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Member of the Association and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Association nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Association).

(c) Additional Qualifications. If an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner, or a partner, an officer or trustee, respectively, shall be eligible to serve on the Board of Directors, except that no single Lot or Dwelling Unit may be represented on the Board of Directors by more than one person at a time.

(d) Term of Office and Vacancy. Subject to the provisions of subparagraph (b) of this Paragraph 11, one (1) member of the Board of Directors shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of two (2) years, except that at the first election after the Applicable Date one member of the Board of Directors shall be elected for a two (2) year term and one for a one (1) year term so that the terms of one-half (1/2) of the members of the Board shall expire annually. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the elected term and until a successor is elected and qualified. Subject to the provisions of subparagraph (b) of this Paragraph 11 as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with subparagraph (e) of this Paragraph 11. The Director so

filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

(e) Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, a successor or successors shall be elected at the same meeting from eligible Owners nominated at the meeting. The Director or Directors so elected shall serve until the next annual meeting of the Owners and until a successor or successors is duly elected and qualified.

(f) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Association representing all of the Owners and be responsible for the functions and duties of the Association, including, but not limited to, providing for the administration of the Tract, the management, maintenance, repair, upkeep and replacement of the Common Area (unless the same are otherwise the responsibility or duty of Owners), and the maintenance, repair, upkeep and replacement of such exterior portions of the Dwelling Units as designated in this Declaration, and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Association, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary, provided any such management agreement shall be for a term of three (3) years or less and shall provide that any such agreement may be terminated by either party upon ninety (90) days written notice to the other party. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

- (i) protection and surveillance of the Common Area, provided, however, this duty shall not include or be deemed or interpreted as a requirement that the Association, the Board or any Managing Agent must provide any on-site or roving guards, security service

or security system for protection or surveillance, and the same need not be furnished;

- (ii) removal of garbage and waste, and snow removal;
- (iii) landscaping, painting, maintenance and upkeep of such exterior portions of the Dwelling Units and Lots as designated in this Declaration;
- (iv) assessment and collection from the Owners of each Owner's respective share of the Common Expenses;
- (v) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (vi) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
- (vii) keeping a current, accurate and detailed record of receipts and expenditures affecting the business and affairs of the Association, specifying and itemizing the Common Expenses; all records and vouchers (including current copies of the Declaration, Articles of Incorporation, By-Laws and Rules) shall be available for examination by an Owner, Mortgagee, insurer or guarantor of a first mortgage at any time during normal business hours;
- (viii) procuring and maintaining for the benefit of the Association and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;

- (ix) furnishing, upon request of any Mortgagee, insurer or guarantor of first mortgage, an audited financial statement for the immediately preceding fiscal year;
- (x) maintenance, repair and replacement of the Entrance Area and collection of Entrance Area Assessments.

(g) Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (i) to employ a Managing Agent to assist the Board in performing its duties;
- (ii) to purchase, lease or otherwise obtain for the Association, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
- (iii) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;
- (iv) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;
- (v) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
- (vi) to open and maintain a bank account or accounts in the name of the Association;
- (vii) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Tract and the Common Area (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of

any such additional rules and regulations so adopted by the Board shall be promptly delivered or mailed to all Owners;

- (viii) to enter the Dwelling Unit of any Owner in case of any emergency whether the Owner is present at the time or not and in the case of nonemergency repairs to enter the Dwelling Unit provided the request is made in advance and is at a time reasonably convenient to the Owner.

(h) Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without the Board amending the budget, after notice to (but not approval of) the Owners, except that in the following cases such amendment and notice shall not be necessary:

- (i) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and
- (ii) expenditures necessary to deal with emergency conditions in which the Board reasonably believes there is insufficient time to call a meeting of the Owners.

(i) Compensation. No Director shall receive any compensation for such person's services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

(j) Non-Liability of Directors. The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Association, unless



any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Association.

(k) Additional Indemnity of Directors. The Association shall indemnify, hold harmless and defend any person, and that person's heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that such person is or was a Director of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by that person in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of that person's duties. The Association shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of the Director's duties where, acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that the Director failed or neglected to attend a meeting or meetings of the Board of Directors.

(l) Bond. The Board of Directors shall provide blanket fidelity bonds for the Managing Agent (if any), the treasurer of the Association, and such other officers of directors of the Association that handle or are responsible for funds indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by

the Board of Directors (provided, however, in no event shall the aggregate amount of the bond be less than a sum equal to three (3) months aggregate assessments on all Dwelling Units) and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. Fidelity bonds shall name the Association as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. Such bonds shall provide that they may not be cancelled or substantially modified for any reason without at least ten (10) days prior written notice to the Association. The expense of any such bonds shall be a Common Expense.

12. Initial Management. The Board of Directors has entered or will hereafter enter into a management agreement with Declarant or with a corporation or other entity affiliated with Declarant or designated by Declarant for a term not to exceed three (3) years with either party having the right to terminate upon ninety (90) days' notice under which Declarant (or such other corporation or entity as appropriate) will provide supervision, management and maintenance of the Common Area, and to the extent the same is not otherwise the responsibility of Owners of individual Dwelling Units, the maintenance of Dwelling Units and in general perform all of the duties and obligations of the Association. Such management agreement may be renewed by the parties for additional terms of three (3) or less years or a new management agreement with different parties may be executed under similar terms and conditions. Any management agreement is or will be subject to termination by Declarant (or such other corporation or entity as appropriate) at any time prior to expiration of its term, in which event the Association shall thereupon and thereafter resume performance of all of its duties and obligations. Notwithstanding anything to the contrary contained herein, so long as a management agreement between the Association and Declarant (or such other corporation or entity as appropriate) is in effect, Declarant (or such other corporation or entity as appropriate) shall have and Declarant hereby reserves to itself (or such other corporation or entity as appropriate), the exclusive right to manage the Tract and perform all the functions of the Association.

13. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the Tract or part thereof as a whole, without a breakdown for each Lot, then each Owner shall pay his or her proportionate share of the

real estate taxes assessed to the land comprising the Tract or that part thereof that is assessed as a whole, which shall be the ratio that the square footage in such Owner's Lot bears to the total square footage of all the land comprising the Tract or part thereof assessed as a whole, and shall pay such Owner's proportionate share of the real estate taxes assessed on the improvements on the Tract or part thereof assessed as a whole based upon the ratio that the square footage of the Owner's Dwelling Unit bears to the total square footage of all Dwelling Units. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Association and treated as a Common Expense.

14. Utilities. Each Owner shall pay for its own utilities which are separately metered. Utilities which are not separately metered shall be treated as and paid as part of the Common Expense unless otherwise determined by the Association.

15. Maintenance, Repairs and Replacements. Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Association, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses. Maintenance of any drainage facilities or pipes located in the Common Area or in the drainage or utility easements shall be furnished by the Association as part of its duties and the costs thereof shall constitute part of the Common Expenses.

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to Assessment hereunder as follows: paint, repair, replacement and care of roofs, gutters, downspouts, and exterior building surfaces; mowing, landscaping and maintenance of all Lots and Entrance Area; and repair and maintenance of all lateral sanitary sewer lines if such is not the responsibility of the City of Indianapolis, Department of Public Works. Such exterior maintenance shall not include any utility lines (other than lateral sanitary sewer lines), glass surfaces, exterior light fixtures, screens and screen doors, door and window fixtures and other hardware, overhead garage doors, patios and decks, and other such items as the Board may so designate (unless specifically designated in this Declaration as the Association's obligation) so long as such items of exception shall apply to all Dwelling Units equally. However, the Association shall be responsible for staining or painting the exteriors of exterior doors, and it shall also be responsible for painting or staining the outside or exterior surfaces of patio fences, if any. Each Owner shall be responsible for maintaining and keeping his Lot and all improvements thereon in a good, clean and sanitary condition

and shall do all work thereon which is not required hereunder to be performed by the Association, including the interiors of patio areas and patio fences. The Association shall not be responsible for repairing and maintaining any patio fences other than painting or staining the exterior, unless the Board of Directors shall otherwise provide.

If any Owner shall fail so to maintain and keep such Owner's Lot or any part thereof in a good, clean and sanitary condition, the Association may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a part of the Owner's assessment, and such cost shall become immediately due, and shall be secured by the Association's lien on the Owner's Lot.

So long as the Tract is subject to this Declaration each Owner, by such Owner's acceptance of a deed to any Lot, irrevocably grants to the Association, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work contemplated herein.

#### 16. Architectural Control

(a) The Architectural Review Board. As a standing committee of the Association, there shall be, and hereby is, established an Architectural Review Board consisting of three (3) or more persons as may, from time to time, be provided in the By-Laws. Until the Applicable Date, the Architectural Review Board shall be the initial Board of Directors. After the Applicable Date, the Architectural Review Board shall be appointed by the Board of Directors or if not so appointed the Architectural Review Board shall be the same as the Board of Directors.

(b) Purposes. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Tract and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) Conditions. No improvements, alterations, repairs, change of colors, excavation, changes in grade or other work which in any way alters the exterior of any Lot or the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner including,

but not limited to, a change in the color or kind of mailbox or color or kind of roof shall be made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building, fence, wall, Dwelling Unit, or other structure shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the Architectural Review Board.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application within thirty (30) days after delivery of such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt), approval will be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board (if a different board than the Board of Directors) may be appealed to the Board of Directors which may reverse or modify such decision by at least two-thirds (2/3) vote of the Directors then serving. The Architectural Review Board may establish committees consisting of two (2) or more of its members, which committees shall exercise such powers of the Board as may be delegated to them.

(e) Maintenance of Architectural Control. The Association may not waive or abandon the procedure for regulating and enforcing the architectural design or exterior appearance of the Dwelling Units nor for maintaining the exterior of the Dwelling Units or the Common Area (including the upkeep of common fences, driveways, lawns and plantings) without the prior written approval of all Owners and all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

#### 17. Party Walls

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Dwelling Unit upon the Tract and which connects two Dwelling Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall, proportionately.

(c) Destruction by Fire or Other Casualty. If any party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners who make use of such party wall or by the Association and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this Paragraph 17, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Paragraph 17, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. (Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor from another party, the Board of Directors of the Association shall select an arbitrator for the refusing party.) The cost of the arbitrators shall be borne equally by the parties.

#### 18. Assessments

(a) Annual Accounting. Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board shall

cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

(b) Proposed Annual Budget. Annually, 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 next fiscal year estimating the total amount of the Common Expenses for the next fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. 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 next 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 vote of the Owners; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget, either the proposed annual budget or the proposed annual budget as amended, is approved and adopted at such meeting. The annual budget, the Regular Assessments and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget and the Regular Assessments shall, in addition, be established to include the creation and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area and such exterior portion of the Dwelling Units as designated in this Declaration, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Area and such exterior portion of the Dwelling Units as designated in this Declaration shall be maintained by the Association in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana selected from time to time by the Board.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Association, there is no annual budget approved by the Owners as herein provided for such next fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

(c) Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the next fiscal year as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against such Owner's Lot (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Lot based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance in equal monthly installments commencing on the first day of the first month of each fiscal year and monthly thereafter through and including the first day of the last month of such fiscal year. Payment of the monthly 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 assessments quarterly, semi-annually or annually in advance. In the event the Regular Assessment for a particular fiscal year of the Association was initially based upon a temporary budget, then the following shall apply:



- (i) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the fiscal year to which such temporary budget was applicable to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment, and all payments thereafter during such fiscal year shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or
- (ii) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owners, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, until the entire amount of such excess has been so credited;

provided, however, that if an Owner had paid his Regular Assessment either quarterly, semi-annually or annually in advance, then the adjustments set forth under (i) or (ii) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Association shall become a lien on each separate Lot as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Lot or any interest therein, shall not relieve or release such Owner or his successor as Owner of such Lot from payment of the Regular Assessment for such Lot as finally determined, and such Owner and his successor as Owner of such Lot shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Association pursuant to Paragraph 19 hereof prior to the final determination and adoption of the annual budget and Regular Assessment

for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Monthly installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same.

(d) Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, and further provided that the Declarant shall not be any Owner's agent, attorney-in-fact or proxy in this vote pursuant to the third sentence of Paragraph 11(b) of this Declaration, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares except as hereinbefore provided with respect to Owners of Lots in the Tract and Additional Tract (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

(e) Regular Assessments Prior to the Applicable Date. During the period that Declarant is constructing Dwelling Units within the Tract or any Additional Tract, it is difficult to accurately allocate the Common Expenses to the individual Lots. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the Applicable Date to enable the Association to perform its duties and functions. Accordingly and notwithstanding any other provision contained in the Declaration, the Articles or the By-Laws or otherwise, prior to the Applicable Date, the annual budget and all Regular Assessments and Special

Assessments shall be established by the Initial Board without any meeting or concurrence of the Owners; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this Paragraph 18.

The Association will enter into a management agreement with Declarant (or a corporation or other entity designated by Declarant) (hereinafter referred to as "Management Agent" or "Managing Agent") in accordance with the provisions of Paragraph 12 of this Declaration. So long as such management agreement (or similar agreement) remains in effect, the Common Expenses or Regular Assessments shall be paid by Owners to Management Agent. Declarant shall guarantee that until the earlier of (1) the termination of said Management Agreement or (2) 1 year from agreement, the monthly Regular Assessment (excluding any amount assessed by Arlington Meadows Homeowners Association, Inc.) shall not exceed Seventy Dollars (\$ 70.00) (the "Guaranteed Charge"). After 1 year from agreement, (assuming that said management agreement or similar agreement is still in effect) and so long thereafter as said management agreement (or similar agreement) remains in effect and Management Agent continues to perform such functions, Declarant guarantees that the monthly Regular Assessment shall not exceed the amount of the Guaranteed Charge plus a maximum of a ten percent (10%) increase in the Guaranteed Charge for each year. Such adjustment to the Guaranteed Charge (up to a 10% increase as determined by the Board) shall be made annually on January 1 of each year so long as said management agreement remains in effect and Management Agent continues to perform such functions. Such monthly charge during such guaranteed period shall entirely defray the Owner's obligation for such Owner's share of Common Expenses, or shall be the Owner's entire Regular Assessment. Declarant shall be responsible for any deficit during such guaranteed period; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures would be covered through Special Assessments or, if sufficient, the Replacement Reserve Fund.

At least fifteen percent (15%) of the Regular Assessment (excluding any amount assessed by Arlington Meadows Homeowners Association, Inc.) shall be designated as a reserve fund for maintenance, repairs or replacement of Common Areas and of those portions of the Dwelling

Units which are the obligation of the Association to maintain, that must be repaired and replaced on a periodic basis.

That portion of the Regular Assessment collected by Declarant prior to the Applicable Date applicable to the replacement reserve shall be held by the Initial Board and if required, applied to the replacement of Common Areas or those portions of Dwelling Units obligated to be repaired and replaced by the Association. To the extent that such replacement reserve is not so applied, the balance thereof shall be retained by the Association at the Applicable Date.

Payment of the Regular Assessment prior to the Applicable Date with respect to each Dwelling Unit (that is not owned by Declarant) shall commence on the date of conveyance by Declarant to such new owner. The first payment shall be payable on the date of conveyance prorated to the first day of the calendar month next ensuing. Thereafter, payment of the Regular Assessment shall be paid the first day of each calendar month during the period prior to the Applicable Date.

Each Owner hereby authorizes the Association and the Board of Directors and its officers to enter into the aforesaid management agreement described in Paragraph 12 of this Declaration and to adhere to and abide by the same.

(f) Entrance Area Assessments. In addition to any Regular or Special Assessment, each Owner and each Subdivision Owner shall be obligated to pay an annual assessment for the cost of maintaining and repairing and replacing the Entrance Area ("Entrance Area Assessment"). Such Entrance Area Assessment shall be paid to the Association and the Association, through its Board of Directors, shall be obligated as part of its duties to maintain, repair and replace the Entrance Area.

On or before the first day of March of each year, the Board shall give each Owner and each Subdivision Owner written notice of the Entrance Area Assessment against such Owner or Subdivision Owner's lot which Entrance Area Assessment shall be the same for each Owner's lot and each Subdivision Owner's lot. Initially, the Entrance Area Assessment shall be \$25 annually. The Entrance Area Assessment may be adjusted annually at the discretion of the Board in an amount no greater than ten percent (10%) of the previous year's Entrance Area

Assessment. Payment of the Entrance Area Assessment is due on or before April 1 of each year. The Board of Directors shall deposit the Entrance Area Assessments, collected from the Owners and Subdivision Owners, in a segregated account, which account shall be used solely for the purpose of maintaining, repairing and replacing the Entrance Area.

Annually, after the close of each fiscal year of the Association, and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner and each Subdivision Owner, a financial statement showing all receipts and all expenses received, incurred and paid during the preceding fiscal year with respect to the Entrance Area.

In the event the funds held by the Association for maintenance, repair and replacement of the Entrance Area exceed the anticipated expenses for maintaining, repairing and replacing the Entrance Area for the upcoming fiscal year, the Board, in its sole discretion, may dispense with the collection of the Entrance Area Assessment for that year. The Board of Directors' waiver of the Entrance Area Assessment for any particular year shall not constitute a waiver of the Board's right to collect or prohibit the Board from collecting any Entrance Area Assessment for any subsequent year should the Board determine that funds available for maintaining the Entrance Area are insufficient.

The Entrance Area Assessment shall commence for any Owner or Subdivision Owner who owns a Lot or a Subdivision Lot as of January 1, 1995. No Entrance Area Assessment shall be due prior to January 1, 1995. Thereafter, the obligation to pay the Entrance Area Assessment shall be the obligation of the Owner of the Lot as of March 31 of each year. For purposes of this provision, Declarant shall not be considered to be an Owner of any Lot.

The provisions of paragraphs 18 (g) and (h) shall be applicable to any Entrance Area Assessment.

The Association may, at its discretion, include the Entrance Area Assessment for the Owners in the Regular Assessment paid by the Owners on a monthly basis.

(g) Failure of Owner to Pay Assessments. No Owner may exempt itself from paying Regular Assessments,

Special Assessments, and Entrance Area Assessments or from contributing toward the Common Expenses or toward any other expense lawfully agreed upon by waiver of the use or enjoyment of the Common Area or by abandonment of its Lot. Each Owner shall be personally liable for the payment of all Regular, Special and Entrance Area Assessments. If an Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessment, Special Assessment or Entrance Way Assessment when due, the lien for such assessment on the Owner's Lot and Dwelling Unit may be filed and foreclosed by the Board of Directors for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. Upon the failure of the Owner to make timely payments of any Regular Assessment, Special Assessment or Entrance Area Assessment when due, the Board may in its discretion accelerate the entire balance of unpaid assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any assessments the Owner and any occupant of the Lot and Dwelling unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Lot and Dwelling Unit and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and Dwelling Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular Assessments, Special Assessments or Entrance Way Assessments. The Board may at its option bring suit to recover a money judgment for any unpaid Regular Assessment, Special Assessment or Entrance Area Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board for and on behalf of the Association shall be entitled to recover from the Owner of the respective Lot and Dwelling Unit costs and expenses of such action incurred (including but not limited to reasonable attorneys fees) and interest from the date such assessments were due until paid at the rate equal to the Indiana statutory interest rate on judgments. The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage.

(h) Subordination of Assessment Lien to Mortgage.  
Notwithstanding anything to the contrary contained in

this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment, Special Assessment or Entrance Area Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Dwelling Unit or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments, Special Assessments or Entrance Way Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments, Special Assessments or Entrance Way Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lot from which it arose).

19. Mortgages.

(a) Notice to Corporation. Any Owner who places a first mortgage lien upon such Owner's Lot, or the Mortgagee, shall notify the Secretary of the Association thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Association shall, upon request of a Mortgagee who has furnished the Association with its name and

address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

(b) Notice of Unpaid Assessments. The Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments, Special Assessments or Entrance Way Assessments or other charges against the Lot, which statement shall be binding upon the Association and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Paragraph 18 hereof.

(c) Right of Mortgagees to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Area which are in default and (2) to pay any overdue premiums on hazard insurance for the Common Area or to secure new hazard insurance for the Common Area on the lapse of a policy. Any Mortgagee making such payment shall be immediately reimbursed by the Association.

(d) Notice of Condemnation or Casualty Loss. Mortgagees shall be timely notified of any condemnation loss or casualty loss which affects a material portion of Arlington Meadows Townhomes Phase I or any Dwelling Unit. Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Association.

(e) Notice to Insurers and Guarantors. Any guarantor of a first mortgage or any insurer shall, upon notification and request to the Association, receive the same notices as are required to be given to Mortgagees.

## 20. Insurance.

(a) Casualty Insurance. The Association shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring all of the Common Area, as applicable, in an amount consonant with



the full replacement value of the improvements which, in whole or in part, comprise the Common Area. If the Board of Directors can obtain such coverage for reasonable amounts, they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of insurance and shall purchase such additional insurance as is necessary to provide the insurance required above.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth shall be paid to it or to the Board of Directors, who shall use or disburse such fund as appropriate.

Each Owner shall be solely responsible for obtaining and maintaining casualty insurance on such Owner's Dwelling Unit and the contents of such Dwelling Unit and such Owner's personal property stored elsewhere on the Tract. Each Owner shall provide the Association with a certificate of insurance indicating that insurance for such Owner's Dwelling Unit has been obtained and is in effect. Such certificate shall provide that the insurance company will provide the Association with sixty (60) days notice of any cancellation or termination of such insurance.

(b) Public Liability Insurance. The Association shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time but not less than \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover the Association, the Board of Directors, any committee or organ of the Association or Board, any Managing Agent appointed or employed by the Association, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Tract, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. Such public liability insurance policy shall contain a provision that such policy shall not be cancelled or substantially modified without at least ten (10) days written notice to the Association.

(c) Other Insurance. The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Association and officers' and directors' liability policies. 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 each Owner, the Association, the Board of Directors and any Managing Agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Association.

(d) General Provisions. The premiums for all insurance hereinabove described shall be paid by the Association as part of the Common Expenses.

In the event of condemnation of all or any part of the Common Area, the Association, as owner of the Common Area, shall represent the Owners in any negotiation or settlement regarding such condemnation. No Owner or any other party shall have priority over any rights of a Mortgagee pursuant to its mortgage in the case of distribution to such Owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards as relates to the Common Area be made by the Association to any Owners or Mortgagees if to do so would be in violation of the Indiana Nonprofit Corporation Act of 1991, Indiana Code 23-17-1-1 et seq. or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Association; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Association for use in the payment of its expenses of operation.

(e) Insurance by Owners. Each Owner shall have the right to purchase such additional insurance at its own expense as such Owner may deem necessary.

21. Casualty and Restoration.

(a) Restoration of Dwelling Units.

(1) Damage to or destruction of any Dwelling Unit due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Owner or Owners of such Dwelling Unit or Dwelling Units that are damaged or destroyed.

(2) For purposes of subparagraph (1) above, repair, reconstruction and restoration shall mean construction or rebuilding of the Dwelling Units to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

(b) Restoration of Common Area. In the event of damage to or destruction of any of the Common Area due to fire or any other casualty or disaster, the Association shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Association, if any, shall be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds, if any, 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 of the Common Area, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Association against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this Paragraph 21(b), repair, reconstruction and restoration shall mean constructing or rebuilding the Common Area to as near as possible the same condition as existed immediately prior to the damage or destruction and with the same type of architecture.

22. Covenants and Restrictions. The following covenants and restrictions on the use and enjoyment of the Lots, Dwelling Units and Common Area shall be in addition to any other covenants or restrictions contained herein and in the Final Plat, and all such 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, or by the Association. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

(a) All Lots and Dwelling Units shall be used exclusively for residential purposes and for occupancy by a single family.

(b) Nothing shall be done or kept in any Dwelling Unit, or on any Lot which will cause an increase in the rate of insurance on any Dwelling Unit or the contents thereof. No Owner shall permit anything to be done or kept in his Dwelling Unit or on his Lot which will result in a cancellation of insurance on any Dwelling Unit, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(c) No nuisance shall be permitted and no waste shall be committed in any Dwelling Unit or on any Lot.

(d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of such Owner's Dwelling Unit or placed on the outside walls of any 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 or any other parts of any building without the prior consent of the Architectural Review Board. No satellite dishes, above-ground pools, outbuildings or chain link fences shall be permitted. Fences, other than chain link fences and free-standing basketball goals with clear acrylic backboards, may be constructed upon approval of the Architectural Review Board. Basketball goals attached to garages shall not be permitted.

(e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Dwelling Unit or on any Lot or any of the Common Area, except that pet dogs, cats or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred or maintained for any commercial purpose, and does not create a nuisance. 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 Tract within ten (10) days after written notice from the Board to the respective Owner to do so.

(f) All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept from view of neighboring homes and streets. All rubbish, trash or garbage shall be stored in closed sanitary containers in areas designated by the Association, shall be regularly removed from the premises, and shall not be allowed to accumulate on any part of the Tract. Trash may be stored in enclosed containers provided by the Association for that purpose. All clotheslines shall be confined to patio areas and shall be below the height of the patio fence. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any part of the Common Area.

(g) 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 Tract.

(h) No "for sale," "for rent" or "for lease" signs, or other signs, or other window or advertising display shall be maintained or permitted on any part of the Tract, any Lot or any Dwelling Unit without the prior consent of the Board; provided, however, that the right is reserved by the Declarant and the Board to place or allow to be placed "for sale" or "for lease" signs on or about the Tract in connection with any unsold or unoccupied Lots and Dwelling Units.

(i) All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board.

(j) No boats, campers, trailers of any kind, buses, mobile homes, recreational vehicles, trucks (larger than 3/4 ton), motorcycles, mini bikes or mopeds shall be permitted, parked or stored anywhere within the Tract except as otherwise specifically permitted by the Board. No repair work shall be done on the Tract on any vehicles, including passenger automobiles.

(k) No Owner may rent or lease his Dwelling Unit for transient or hotel purposes.

(l) No storage barn or other out building shall be constructed on any Lot.

(m) Any Owner who leases a Dwelling Unit shall lease the entire Dwelling Unit and shall have a written lease which shall provide that the lease is subject to the provisions of the Declaration and any failure of the lessee to comply with the terms of the Declaration, shall be a default under the lease.

(n) Each Owner shall maintain the dusk to dawn coach light located on the Lot at the time of conveyance of the Lot by Declarant to Owner.

(o) The development of the Tract and the use of the Tract shall be subject to the terms and provisions of the Final Proposed Preliminary Plan for Arlington Meadows presented and adopted as part of Rezoning Petition No. 1993-0184550.

Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, Declarant shall have the right to use and maintain any Lots and Dwelling Units owned by Declarant and other portions of the Tract (other than individual Dwelling Units and Lots owned by Owners other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction of Dwelling Units and the sale of Lots and Dwelling Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model Dwelling Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all such facilities so used or maintained by Declarant and such facilities shall not be or become part of the Common Area, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Tract at any time.

23. Amendment of Declaration.

(a) Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

- (i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
- (ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors of Owners having in the aggregate at least a majority of the votes of all Owners.
- (iii) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.
- (iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners. In the event any Lot or Dwelling Unit is subject to a first 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 mortgage interest to the Board of Directors in accordance with the provisions hereof.
- (v) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of this Declaration of Paragraph 20 with respect to casualty insurance or fidelity bonds to be maintained by the Association, or (3) the provisions of Paragraph 21 of this Declaration with respect to reconstruction or repair of the Common Area or Dwelling Units in the event of fire or any other casualty or disaster, or (4) the provisions of Paragraph 16 of this Declaration establishing the Architectural Review Board and providing for its functions, or (5) the provisions of Paragraph 18 of this Declaration with respect to the commencement of assessments

on any Lot, without, in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

- (vi) Additional Special Amendments. No amendment to this Declaration shall be adopted which imposes a right of first refusal or similar restriction or which changes (1) the method of voting, or (2) reserves for and responsibility for maintenance, repair and replacement of the Common Area and Dwelling Units, or (3) rights to use the Common Area, or (4) annexation of property to Arlington Meadows Townhomes Phase I (other than as provided in Paragraph 24), or (5) the boundaries of any Dwelling Unit, or (6) the leasing of Dwelling Units, or (7) termination of the applicability of this Declaration, or (8) any provisions which are for the express benefit of Mortgagees without the consent of at least ninety percent (90%) of the votes of the Owners for the first twenty (20) years after the recording of this Declaration and thereafter at least seventy-five percent (75%) of the votes of Owners and the consent of Mortgagees holding mortgages on fifty percent (50%) of the Dwelling Units subject to mortgages.
- (vii) Amendments Requiring FHA/VA Approval. As long as there is a Class B membership, the following action will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties (other than the Additional Tract), dedication of Common Area and amendment of this Declaration.
- (viii) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.



(ix) Failure of Mortgagee to Respond. Any Mortgagee who receives a written request to approve an amendment and fails to give a negative response within thirty (30) days after receiving such request shall be deemed to have approved such request.

(b) Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other Person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Association, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Dwelling Units, (iii) to bring this Declaration into compliance with any statutory requirements or (iv) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph 23 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Lot or Dwelling Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Paragraph 23 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Tract.

(c) Amendment Prior to the Applicable Date. Notwithstanding anything to the contrary contained herein or in the By-Laws, there shall be no amendment of the Declaration prior to the Applicable Date without the consent and approval of Declarant.

24. Annexation of Additional Tract. In addition to Arlington Meadows Townhomes Phase I, Declarant is the owner or has the right to purchase certain real estate described in the attached Exhibit C which is incorporated herein by reference and which is located contiguous to Arlington Meadows Townhomes Phase I ("Additional Tract").

At any time prior to January 31, 2000, Declarant, without the consent of the Owners, may, but is not obligated to, develop the Additional Tract or any part thereof, in substantially the same manner as Arlington Meadows Townhomes Phase I and file one or more Supplemental Declarations and Final Plats for such Additional Tract or part thereof as it desires and convey the Common Area thereof to the Association; provided, however, that the maximum number of Dwelling Units which may be contained in the total development shall not be more than sixty-six (66) and such units shall be consistent with the quality of construction of previous units.

In the event the Additional Tract or any part of it is platted in a manner similar to Arlington Meadows Townhomes Phase I, the Owners of such Lots in the Additional Tract or parts thereof, shall have the same rights and obligations as the Owners herein, and the Association shall have the same jurisdiction and authority over such Additional Tract or parts thereof as its authority and jurisdiction herein.

In the event Declarant decides not to develop or plat the Additional Tract or any part of it in a manner similar to Arlington Meadows Townhomes Phase I, Declarant shall file a Declaration stating that the Additional Tract or any part thereof shall not be developed as contemplated herein; provided, however, any part of the Additional Tract for which a Supplemental Declaration has not been filed by January 31, 2000, shall be automatically removed from the possibility of having the Association provide for the maintenance, repair, replacement, administration and operation of such part of the Additional Tract, unless such is established by the Owners in the Tract and those in the Additional Tract.

Regardless of the method of development of the Additional Tract and whether or not all or any part of the Additional Tract comes within the jurisdiction of the Association or subject to the Declaration, Declarant reserves unto itself, its successors and assigns, for the use and benefit of that part of the Additional Tract not coming within the jurisdiction of the Association or subject to the Declaration, the right and easement to enter upon the streets of Arlington Meadows Townhomes Phase I to provide ingress and egress to the Additional Tract.

Declarant hereby grants to the Owners in Arlington Meadows Townhomes Phase I the right and easement to enter upon any streets and roadways that may exist in the Additional Tract to provide ingress and egress to Arlington Meadows Townhomes Phase I as may be necessary.

It is the purpose and intent of the easements herein granted and reserved to provide free and unrestricted use and access across the roadways and streets of the Tract and Additional Tract, no matter how developed, for the owners of the Tract and Additional Tract, their guests, invitees, and all public and quasi-public vehicles, including, but not limited to, police, fire and emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles.

The assessment which the Owner of each Lot in the Additional Tract or part thereof, if within the jurisdiction of the Association, shall be obligated to pay shall be equal to that paid by any Owner herein and shall commence on the date of conveyance of such Lot by Declarant. No assessment (Regular, Special or otherwise) on any Lot in the Additional Tract shall be due until such Lot has been conveyed by Declarant or the Dwelling Unit thereon is occupied for residential purposes.

25. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the By-Laws incorporated herein by reference, 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 Lot shall constitute an agreement that the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and rules and regulations, as each may be amended or supplemented 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 be binding on any person having at any time any interest or estate in a Lot or the Tract 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 Lot or Lots or any part of the Tract in any manner shall be subject to the Declaration, the Articles of Incorporation, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

26. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by such Owner's negligence or by that of any member of such Owner's family or its guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of insurance carried by the Association. Each Owner shall pay the amount of any increase in insurance premiums occasioned by such Owner's use, misuse, occupancy or abandonment of his Lot or its appurtenances or of the Common Area and Overall Common Area.

27. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, 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 its reasonable attorneys' fees incurred in connection with such default or failure.

28. 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 Area or Overall Common Area or by abandonment of his Lot.

29. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the By-Laws, and each shall be enforced to the greatest extent permitted by law.

30. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. And the singular shall include and refer to the plural and vice versa as appropriate.

31. Interpretation. The captions and titles of the various articles, sections, subsections, paragraphs and subparagraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

32. The Plat. The Final Plat of The Arlington Meadows Townhomes Phase I is incorporated into this Declaration by reference and has been filed in the office of the Recorder of Marion County, Indiana, as of the 21 day of October, 1993, as Instrument No. 1993-0184550.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first above written.

DURA BUILDERS, INC

By: [Signature]  
Paul Shoopman, President

STATE OF INDIANA )  
                              )SS:  
COUNTY OF Marion )

Before me, a Notary Public in and for said County and State, personally appeared Paul Shoopman, by me known and by me known to be the President of Dura Builders, Inc., who acknowledged the execution of the foregoing "Declaration of Covenants and Restrictions of The Arlington Meadows Townhomes Property Ownership Phase I" on behalf of said corporation.

Witness my hand and Notarial Seal this 6th day of January, 1994.

[Signature]  
Notary Public  
Robin R. Hoenickel  
(Printed Signature)

My Commission Expires: 5-23-97  
My County of Residence: Johnson

This instrument prepared by Philip A. Nicely, Attorney at Law, Bose McKinney & Evans, 8888 Keystone Crossing, Suite 1201, Indianapolis, Indiana 46240.