



# **DAVID BRENTON'S TEAM**

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## **RE/MAX Select, REALTORS**

**48 N Emerson Ave Suite 600 Greenwood, IN 46143-8895**

**(317) 882-7210 Office • (317) 888-7201 Fax**

**[www.move2indy.com](http://www.move2indy.com)**

The covenants provided may or may not include any amendments made due to governing agencies (ie: national, state, city, local and neighborhood agencies). Please contact the Recorder's office for the county where the property is located to receive updated information.

**The information is deemed reliable, but not guaranteed.**

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# Arlington Meadows Homeowners Association

## COVENANTS FOR ARLINGTON MEADOWS

1. The foregoing plat shall be known and designated as Arlington Meadows Section 1.
2. Streets as designated on the plat if not heretofore dedicated are hereby dedicated to the public.
3. All numbered lots in this subdivision are reserved for residential purposes and only one (1) single family dwelling not exceeding two and one half (2 ½) feet shall be built closer than thirty-five (35) feet in height with the usual accessory buildings shall be erected or maintained on any lot in this subdivision.
4. No lot in this subdivision shall hereafter be subdivided into parcels for additional residential purposes.
5. No part of any structure (except an open porch or eave or cornice over-hang not Exceeding two (2) feet shall be built closer than thirty-two and one half (32 ½) feet to right-of-way line of the residential collector street (Victory Drive) and no closer than twenty (20) feet to the right-of-way lines of all other public streets within the development.
6. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and six (6) feet above the street shall be placed or permitted to remain within the triangular area formed by the street property lines and a line connecting points twenty-five (25) feet from the intersection of said street lines. The same sight line limitations shall apply to any lot within ten (10) feet from the intersection of the street line with the edge of a driveway. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstructions of sight lines.
7. No trailer, tent, garage or other out-building erected in the subdivision shall be used as a residence, temporarily or permanently, nor shall any building of a temporary character be erected.

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8. No boat, travel trailer, semi-trucks, campers or motor homes of any description shall be stored on any lot exposed to view from the street or neighboring lot.
9. No building, wall, fence or other structure shall be erected, or placed on any lot in this subdivision, until plans and specifications of such building, wall, fence or other structure and the plot plan showing the location of the same, have been approved in writing as to conformity and harmony of the external design with existing structures in said subdivision, and as to location of such structure or structures with respect to topography and finished ground elevations by a committee to be appointed by the owner. Said committee may be abolished at any time at the owner's discretion, provided a written document is recorded accordingly.
10. The minimum floor area for single-family structures on lots immediately adjacent to the Farhill Downs Subdivision shall be 1200 square feet, exclusive of garages, porches and other accessory structures. The minimum ground floor area for structures containing more than one story on said lots shall be 800 square feet, exclusive of garages, porches and other accessory structures. The minimum floor area for single-family structures on all other lots shall be 1,000 square feet, exclusive of garages, porches and other accessory structures. The minimum ground floor area for structures containing more than one story on said lots shall be 700 square feet, exclusive of garages, porches and other accessory structures.
11. The minimum side yard setback shall be no less than five (5) feet for each lot in the single-family portion of the development. A minimum rear yard of twenty (20) feet shall be provided for each lot in the single-family portion of the development, with the exception of the corner lots being fifteen (15) feet.
12. All driveways in the subdivision shall be paved with either asphalt or concrete.
13. All sidewalks in the subdivision shall be installed by the purchaser concurrent with the installation of the driveway. Provided, however, in any event, the purchaser shall install said sidewalk(s) not later than one (1) year from the date of said purchase or as required by the Marion County Ordinances.
14. No noxious or offensive trade or activity shall be permitted upon any lot, nor shall anything be done thereon which may be, or become, an annoyance or nuisance to the neighborhood.
15. No animals, livestock or poultry shall be raised, bred or kept on any lot except dogs, cats and other usual household pets may be kept provided they are not kept, bred or maintained for any commercial purposes.
16. EASEMENTS FOR DRAINAGE, SEWERS, UTILITIES AND LANDSCAPE  
Lots are subject to drainage easements and utility easements, either separately or in combination, as shown on the plat, which are reserved for the use of the lot owner, public utility companies and governmental agencies as follows:

- A. Drainage easements (D.E.) – are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of the subdivision and adjoining ground and/or public-drainage system; and it shall be the individual responsibility of the lot owner to maintain the drainage across his lot. Under no circumstances shall said basement be blocked in any manner. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by the developer of the subdivision.
  - B. Sanitary sewer easement (S.S.E.) – are created for the use of the local Governmental agency having jurisdiction over the sanitary waste disposal system of said city and/or county designated to serve the addition for the purposes of installation and maintenance of sewers that are a part of said system. Each owner of a lot must connect with any public sanitary sewer available.
  - C. Utility easements (U.E.) – are created for the use of public utility Companies, not including transportation companies, for the installation of pipes, mains, ducts, communication lines (which shall include cable T.V.), and such other further public services the declarant may deem necessary; provided, however, declarant shall restore the disturbed area as nearly as is possible to the condition in which it was found. No permanent structures shall be constructed within an easement area.
  - D. Landscape easements (L.E.) – are created and reserved for the use and Benefit of the developer and the property owner's association for the installation, construction, maintenance, repair, reconstruction and replacement of earthen mound, plantings and other landscaping, walls, fences, entry ways, columns, landscape irrigation systems, accent lighting systems, street lights, subdivision identification signs and other items.
17. Drainage swales (ditches) along dedicated roadways and within the right-of-way, or on dedicated easements, are not to be altered, dug out, filled in, tiled or otherwise changed without the written permission of the Department of Public Works. Property owners must maintain these swales as sodded grassways, or other non-eroding surfaces. Water from roofs or parking area must be contained on the property long enough so that said drainage swales or ditches will not be damaged by such water. Driveways may be constructed over these swales or ditches only when appropriate sized culverts or other approved structures have been permitted by the Department of Public Work.
- Any property owner altering, changing, damaging, or failing to maintain these drainage swales or ditches will be held responsible for such action and will be given ten days notice by certified mail to repair said damage, after which time, if no action is taken, the Department of Public Works will cause said repairs to be accomplished and the bill for said repairs will be sent to the affected property

owner for immediate payment. Failure to pay will result in a lien against property.

18. The Metropolitan Development Commission, its successors and assigns, shall have no right, power or authority to enforce any covenants, commitments, restrictions or other limitations contained in this plat other than those covenants, commitments, restrictions or limitations that expressly run in favor of the Metropolitan Development Commission; provided further, that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the subdivision control ordinance, 58-AO-3, as amended, or any conditions attached to approval of this plat by the plat committee.
19. If any parties owning or claiming an interest in any lot, or part thereof, in the addition, or any person or persons holding under them or occupying any lot, or part thereof, violate any of the covenants herein, it shall be lawful for any person or persons, owning any real estate in said addition to prosecute any proceedings at law, or in equity against the person, or persons, violating or attempting to violate any such covenants, either to prevent him, or them, or doing, or to recover damages therefore.
20. The within covenants, limitations and restrictions shall run with the land and shall be binding on all parties and persons claiming under them. Such provisions shall be in full force and effect until January 1, 2013, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless by vote of the majority of the then owners of the lots it is agreed to change the covenants in whole or in part. Invalidation of any of the covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.
21. **The following is a list of approved additions to the covenants by the Covenants Committee to the Arlington Meadows Homeowners Association Board.**
  1. **Speed Limit for Arlington Meadows is 20 mph.**
  2. **No parking of any type of vehicle in front of any other homeowner's residence.**
  3. **Because of emergency and safety reasons, parking is limited to the garage and driveway.**
  4. **Long-term street parking over 24 hours of any vehicle will result in Towing at the homeowners expense.**
  5. **Ponds are to be accessed through common areas only. Homeowner's Property on the pond extends to the pond. No trespassing on any residence around the ponds.**

*June 18, 2001*

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- 6. Homeowner annual fees are due by March 15. A late fee of \$10.00 will be charged if not paid on time.**
  
- 7. Any violation of any covenants will result in fines from \$50.00 to \$150.00 per offense with specified instructions to rectify the situation.**

CODE OF BY-LAWS  
OF  
ARLINGTON MEADOWS HOMEOWNER'S ASSOCIATION, INC.

ARTICLE I

Identification

Section 1.1. Name. The name of the Corporation pursuant to the Articles of Incorporation filed with the Indiana Secretary of State on May 11, 1995, is Arlington Meadows Homeowner's Association, Inc. (hereinafter referred to as the "Corporation").

Section 1.2. Registered Office and Registered Agent. The post office address of the registered office of the Corporation is 745 Beachway Drive, Indianapolis, Indiana 46224; and the name and post office address of its Registered Agent is Kurt R. Trewartha, 745 Beachway Drive, Indianapolis, Indiana 46224. Until the Board of Directors otherwise determines, the registered office of the Corporation shall be the registered place of business of the Corporation, but such registered office may be changed from time to time by the Board of Directors in the manner provided by law and need not be identical to the registered place of business of the Corporation.

Section 1.3. Seal. The Corporation need not use a seal. If one is used, it shall be circular in form and mounted upon a metal die suitable for impressing the same upon paper. About the upper periphery of the seal shall appear the words "Arlington Meadows Homeowner's Association, Inc." and about the lower periphery thereof the word "Indiana." The seal may be altered by the Board of Directors at its pleasure and may be used by causing it or a facsimile thereof to be impressed, affixed, printed or otherwise reproduced.

Section 1.4. Fiscal Year. The fiscal year of the Corporation shall begin on January 1 of each year and end on the 31st day of December, except that the first fiscal year shall begin on the date of incorporation of the Corporation.

ARTICLE II

Definitions

Section 2.1. "Articles" means the Articles of Incorporation of the Corporation 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.

Section 2.2. "Board of Directors" means the Board of Directors of the Corporation.

Section 2.3. "Common Area" means those portions of the Property, including improvements thereto, facilities and personal property owned, to-be-owned, leased or to-be-leased by the Corporation from time to time for the common use, benefit and enjoyment of the Owners. Unless expressly stated to the contrary, the term Common Area as used herein (whether or not so expressed) shall include all portions of the Property designated as "Common Area" upon a Plat.

Section 2.4. "Corporation" means Arlington Meadows Homeowner's Association, Inc., an Indiana not-for-profit corporation, its successors and assigns.

Section 2.5. "Declarant" means Dura-Builders, Inc., an Indiana corporation, its successors and assigns as declarant under the Declaration.

Section 2.6. "Declaration" means the Declaration of Covenants, Conditions and Restrictions of Arlington Meadows recorded in the Office of the Recorder of Marion County, Indiana, as the same may be amended from time to time.

Section 2.7. "Director" means a member of the Board of Directors, elected or appointed in accordance with these By-Laws.

Section 2.8. "Lot" means any parcel of land designated as such upon a Plat or, after construction of a dwelling unit, that parcel of land upon which a dwelling unit is constructed that is conveyed to an Owner by the Declarant. A "Lot" may contain portions of real estate greater or less than its originally platted dimensions should the Declarant deem it advisable in order to accommodate the construction of a dwelling unit.

Section 2.9. "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" as used herein shall include the Declarant.

Section 2.10. "Plat" shall mean a subdivision plat of the Property or a part thereof which is recorded in the Office of the Recorder of Marion County, Indiana, as the same may be hereafter supplemented by law or pursuant to the Declaration.

Section 2.11. "Property" means the real estate described in Exhibit "A" of the Declaration, together with such additional real estate as may from time to time be made subject to the Declaration pursuant to the terms thereof.

### ARTICLE III

#### MEMBERSHIP

Section 3.1. Membership and Voting. Membership in the Corporation and voting rights of Members are governed by the Articles. Except as otherwise provided in the Articles, in the Declaration or in these By-Laws, each question shall be determined by a majority of the eligible votes cast by the Members present, in person or by proxy, at a meeting at which a quorum is present. The Members may take any action without a meeting that could be taken at a meeting, in the manner provided in the Articles. Additionally, any action required or permitted to be taken at any meeting of the Board of Directors, may be taken without a meeting, if prior to such action a written consent to such action is signed by all members of the Board of Directors, and such written consent is filed with the minutes of the proceeding of the Board.

Section 3.2. Rights, Preferences and Limitations of Members. Each Member of the Corporation shall have the same rights, preferences, limitations and restrictions as the other Members of the Corporation.

#### ARTICLE IV

##### MEETINGS OF MEMBERS

Section 4.1. Place of Meeting. All meetings of Members of the Corporation shall be held at such place, within Marion County, State of Indiana, as may be determined by the Board of Directors and specified in the notices or waivers of notice thereof or proxies to represent Members.

Section 4.2. Annual Meetings. The annual meetings of Members shall be held on the 1st day of April of each year, if such day is not a legal holiday, or, if a legal holiday, then on the next succeeding business day not a legal holiday. The Board of Directors may select a different date for any annual meeting, but in no event shall the annual meeting be held later than five (5) months after the close of the fiscal year. Any and all business of any nature or character may be transacted, and action may be taken thereon, at any annual meeting, except as otherwise provided by law or by these By-Laws.

Section 4.3. Special Meetings. Special meetings of the Members may be called by the President, or by a majority of the Board of Directors, or by written petition signed by one-fourth (1/4) of all Members who together are entitled to vote one-fourth (1/4) of all the votes of the Class A Membership. At any special meeting of the Members, no business other than that for which the meeting is called shall be transacted.

Section 4.4. Notice of Meetings. A written or printed notice stating the place, day and hour of a meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called shall be delivered or mailed by the Secretary to each Member of record of the Corporation entitled to vote at the meeting, at the address which appears upon the records of the Corporation at least ten (10) days before the date of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail postage prepaid addressed to the Member. The address of any Member appearing upon the records of the Corporation shall be deemed to be the latest address of such Member.

Notice of any Members' meeting may be waived in writing filed with the Secretary or by attendance at the meeting in person.

Section 4.5. Voting at Meetings.

a. Voting Rights. Except as otherwise provided by law or by the provision of the Articles of Incorporation, at each meeting of the Members, each Member of the Corporation shall be entitled to one (1) vote on each matter submitted to a vote at such meeting.

b. Proxies. A Member is entitled to vote either in person, or by proxy executed in writing by such Member or by his or her duly authorized attorney-in-fact and delivered to the secretary of the

meeting before or at the time of the particular meeting. The attendance or the vote at any meeting of a proxy of any Member so appointed shall for all purposes be considered as the attendance or vote in person of such Member. No proxy shall be valid after eleven (11) months from the date of its execution unless a longer period is expressly provided in the proxy. Each proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her Lot.

c. Quorum. The presence at the meeting, in person or by proxy, of Members entitled to cast one-fourth (1/4) of the votes of each class of membership shall constitute a quorum for any action, except as otherwise required by the Articles or the Declaration.

d. Adjournments. Any meeting of Members, including both annual and special meetings and any adjournments thereof, may be adjourned to a later date without notice other than announcement at the meeting even though less than a quorum is present. At any such adjourned meeting at which a quorum is present, in person or by proxy, any business may be transaction which might have been transacted at the meeting as originally notified or called.

Section 4.6. Voting List. The Secretary of the Corporation shall, at all times, keep at the registered office of the Corporation, a complete and accurate list of all Members entitled to vote by the Articles which may be inspected by any member, for any purpose, at any reasonable time.

Section 4.7. Action by Written Consent and Conference Phone. Any action required or permitted to be taken at any meeting of the Members may be taken without a meeting if, prior to such action, a written consent thereto, setting forth the action so taken, is signed by all the Members entitled to vote with respect to the subject matter thereof, and such written consent is filed with the minutes of the proceedings of the Members. Such consent shall have the same effect as a unanimous vote of the Members. If a Member participates in a meeting of the Members by means of a conference telephone or similar communication system by which all persons participating in the meeting can communicate with each other, the Member shall be deemed present at such meeting for all purposes.

Section 4.8. Voting by Co-Owners and Entities. The vote appurtenant to any Lot in which more than one (1) person owns an interest may be exercised by any of such persons present at any meeting, unless the Corporation is advised (by objection or protest at the meeting or written notice prior thereto) by any other person owning an interest in such Lot that the Owners of the Lot are unable to agree upon the manner in which the vote appurtenant to such Lot shall be cast at such meeting or on any particular question to come before such meeting. In such event the vote appurtenant to the Lot shall not be counted at the meeting or on the particular question noted, as the case may be. In the event any Lot is owned by a corporation, then the vote appurtenant to such Lot shall be cast by a person designated in a certificate signed by the president or any vice president of such corporation and attested by the secretary or an assistant secretary of such corporation and filed with the Secretary of the Corporation prior to the meeting. The vote appurtenant to any Lot owned by a trust or partnership may be exercised by any trustee or partner thereof, as the case may be, and unless any objection

or protest by any other trustee or partner is noted at such meeting or in writing prior thereto, the Chairman of such meeting shall have no duty to inquire as to the authority of the person casting such vote or votes.

**Section 4.9. Suspension of Voting Rights.** No Class A Member shown on the books or management accounts of the Corporation to be more than sixty (60) days delinquent in any payment due to the Corporation shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors.

**Section 4.10. Rights of Mortgagees.** An Institutional Mortgagee (as defined in Section 11.2 of Article XI) of any Lot who desires notice of the annual and special meetings of the Members shall notify the Secretary to that effect by Registered Mail - Return Receipt Requested. Any such notice shall contain the name and post office address of such Institutional Mortgagee and the name of the person to whom such notice should be addressed. The Secretary of the Corporation shall maintain a roster of all Institutional Mortgagees from whom such notices are received and it shall be the duty of the Secretary to mail or otherwise cause the delivery of a notice of each meeting of the Members to each such Institutional Mortgagee, in the same manner, and subject to the same requirements and limitations as are provided for notice to the Members in Section 4.4 of this Article IV. Any representative may attend any meeting of the Members and such representative may participate in the discussion at any such meeting and may, upon his or her request made to the Chairman in advance of the meeting, address the Members present at any such meeting. Such representative shall have no voting rights at any such meeting.

## **ARTICLE V**

### **Directors**

**Section 5.1. Duties.** The business, property and affairs of the Corporation shall be managed and controlled by the Board of Directors and, subject to such restrictions, if any, as may be imposed by law, the Articles or by these By-Laws, the Board of Directors may, and are fully authorized to, do all such lawful acts and things as may be done by the Corporation.

**Section 5.2. Number of Directors.** The Board of Directors shall consist of three (3) directors, who need not be Members of the Corporation. The number of Directors may be increased or decreased from time to time by resolution of the Board of Directors of the Corporation, but under no such circumstances shall the number of Directors be less than three (3).

**Section 5.3. Election and Term.** Except as otherwise provided in Section 5.5 of this Article V, the Directors shall be elected each year at the annual meeting of the Members, or at a special meeting of the Members held in lieu of the annual meeting. Each such Director shall hold office, unless he or she is removed in accordance with the provisions of these By-Laws or he or she resigns or dies or becomes incapacitated so that he or she can no longer perform any of his or her duties as a Director, for a one-year term for which he or she is elected and until his or her successor shall have been elected and qualified. Each Director shall qualify by accepting his or her election to office either expressly or by acting as a Director. A Director may serve any number of consecutive terms.

**Section 5.4. Removal.** Any Director may be removed from the Board of Directors without cause, by a majority vote of the Members of the Corporation, at a meeting of the Members called expressly for that purpose. A Director may also be removed by a majority vote of the other Directors if he or she fails to attend three (3) or more consecutive meetings of the Board of Directors.

**Section 5.5. Vacancies.** Vacancies occurring in the membership of the Board of Directors caused by resignation, death or other incapacity, or increase in the number of Directors shall be filled by a majority vote of the remaining members of the Board, and each Director so elected shall serve until the next meeting of the Members, or until a successor shall have been duly elected and qualified. A majority of the existing Board of Directors shall be necessary to constitute a quorum.

**Section 5.6. Annual Meetings.** The Board of Directors shall meet annually, without notice, immediately following, and at the same place as, the annual meeting of the Members.

**Section 5.7. Regular Meetings.** Regular meetings shall be held at such times and places, within Marion County State of Indiana, as may be determined by the Board of Directors.

**Section 5.8. Special Meetings.** Special meetings of the Board of Directors may be called by the Chairman or by two (2) or more members of the Board of Directors, within Marion County, State of Indiana, upon not less than three (3) days notice, specifying the time, place and general purposes of the meeting, given to each Director personally, by telephone, telegraph, televideo, cable wireless or other means of reliable electronic communication, or by first class mail, postage prepaid.

**Section 5.9. Notice.** The Secretary or an Assistant Secretary shall, but in the event of the absence of the Secretary or an Assistant Secretary or the failure, inability, refusal or omission on the part of the Secretary or an Assistant Secretary so to do, any other officer of the Corporation may, give notice of each special meeting, and of the place, day and hour of the particular meeting, in person or by mail, or by telephone, telegraph or other means of communication. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Any Director may waive notice of any meeting in writing.

Section 5.10. Business to be Transacted. Neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in the notice or any waiver of notice of such meeting. Any and all business of any nature or character whatsoever may be transacted and action may be taken thereon at any meeting of the Board of Directors.

Section 5.11. Quorum - Adjournment if Quorum is Not Present. A majority of the number of Directors fixed by, or in the manner provided in, the Articles or these By-Laws shall constitute a quorum for the transaction of any and all business; but a quorum shall never be less than one-third (1/3) of the number of Directors, and in no case be less than two (2) Directors, unless prescribed by law. At any meeting of the Board of Directors, if there be less than a quorum present, a majority of those present may adjourn the meeting from time to time without notice, other than by written, telegraphic or telephonic announcement to all Directors of the time and place at which the meeting will reconvene, until the transaction of any and all business submitted or proposed to be submitted to such meeting or any adjournment thereof shall have been completed. The act of the majority of the Directors present at any meeting of the Board of Directors at which a quorum is present shall constitute the act of the Board of Directors, unless the act of a greater number is required by law or the Articles or these By-Laws. If a Director participates in a meeting of the Board of Directors by means of a conference telephone or similar communication system by which all persons participating in the meeting can communicate with each other, the Director shall be deemed present at such meeting for all purposes.

Section 5.12. Presumption of Assent. A Director who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent shall be entered in the minutes of the meeting or unless he or she shall file his or her written dissent to such action with the presiding officer of the meeting before its adjournment or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 5.13. Action by Unanimous Consent. Any action required or permitted to be taken at a meeting of the Board of Directors or any committee may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members of the Board of Directors or committee, as the case may be. Such consent shall have the same force and effect as a unanimous vote at a meeting, and may be stated as such in any document or instrument filed with the Secretary of State of the State of Indiana.

Section 5.14. Committees. The Board of Directors, by resolution adopted by a majority of the Board of Directors, may designate two (2) or more Directors of the Corporation to constitute an executive committee and one or more other committees, each of which, to the extent provided in such resolution or in the Articles of Incorporation or in these By-Laws of the Corporation, shall have and may exercise such authority of the Board of Directors as shall be expressly delegated by the Board from time to time; except that no such committee shall have the authority of the Board of Directors in reference to:

- a. amend the Articles of Incorporation; \_

- b. approve a plan of merger or consolidation not requiring Member approval;
- c. recommend to the Members the sale, lease or exchange of all or substantially all of the property and assets of the Corporation;
- d. recommend to the Members a voluntary dissolution of the Corporation or a revocation thereof;
- e. amend, alter or repeal the By-Laws of the Corporation or adopt new by-laws for the Corporation;
- f. fill vacancies in the Board of Directors;
- g. elect or remove officers or members of any such committee;
- h. fix the compensation of any member of such committee; or
- i. alter or repeal any resolution of the Board of Directors which by its terms provides that it shall not be so amendable or repealable.

A majority of all the members of any such committee may determine its action and fix the time and place of its meetings, unless the Board of Directors shall otherwise provide. The Board of Directors shall have power at any time to change the number and members of any such committee, to fill vacancies and to discharge any such committee. The designation of such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon it or him by The Indiana Not-for-Profit Corporation Act of 1991, as amended. In addition, the Board of Directors may appoint an Architectural Control Committee as provided in the Declaration.

Section 5.15. Compensation. No Director or officer of the Corporation shall receive, directly or indirectly, any salary, compensation or emolument therefrom in his or her capacity as a Director, provided, however, a Director may be reimbursed for actual expenses incurred in the performance of his or her duties as a Director.

## ARTICLE VI

### Standards of Conduct for Directors

Section 6.1. Powers. The Board of Directors shall have the power to exercise for the Corporation all powers, duties and authority vested in or delegated to the Corporation (and not reserved to the Membership of the Corporation) by the provisions of these By-Laws, the Articles or the Declaration and applicable law, which shall include, but not be limited to:

- a. Adopt and publish rules and regulations governing the use of the Lots, the Common Area owned by the Corporation and any

facilities at any time located on the Property, and the personal conduct of the Members and guests thereon, and to establish penalties for the infraction thereof; and

b. Suspend the voting rights and right to use of the recreational facilities of a Member during any period in which such Member shall be in default in payment of any assessment levied by the Corporation. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days, for infraction of published rules and regulations.

Section 6.2. Duties. Without limitation on the Board of Director's general duty to manage the affairs of the Corporation, it shall be the duty of the Board of Directors to:

a. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A Members who are entitled to vote;

b. Supervise all officers, agents and employees of this Corporation, and to see that their duties are properly performed;

c. As more fully provided in the Declaration, to: (i) fix and send written notice of assessments; and, (ii) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date, or bring an action at law against the owner personally obligated to pay the same;

d. Issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

e. Procure and maintain the insurance coverages required by the Declaration;

f. Cause all officers or employees having fiscal responsibilities to be bonded, as required by the Declaration; and,

g. Cause the Property to be maintained to the extent of the Association's responsibility therefor as provided in the Declaration.

Every Director of this Corporation shall discharge the duties of a Director in good faith and in a manner which the Director believes to be in the best interests of the Corporation. Each Director, in performing his or her duties prescribed by these By-Laws, the Articles of Incorporation, or by law, has the right to rely on reports and financial data of the Corporation, if prepared by the Corporation's legal counsel, certified public accounts, or a duly organized

committee of the Board of Directors of which the Director is not a member. A Director may, in considering the best interests of the Corporation, consider the effects of any action on members, employees, clients or the Corporation, or any other factors the Director considers pertinent.

A Director is not liable for any action taken as a Director, or for any failure to take any action unless the Director has breached or failed to perform his or her duties in compliance with these By-Laws, and any breach thereof constitutes willful misconduct or recklessness.

**Section 6.3. Conflict of Interest.** A conflict of interest is a transaction of the Corporation in which any Director or another entity in which the Director serves as a Director, officer, trustee, or general partner, has a direct or indirect material financial interest in the transaction unless the material facts of the Director's interest were disclosed to the Board of Directors or Members prior to the transaction.

The Board of Directors or Members may authorize, approve and ratify a conflict of interest transaction by a majority of affirmative votes.

**Section 6.4. Interest of Directors in Contracts.** Any contract or other transaction between the Corporation and one or more of its Directors, or between the Corporation and any firm of which one or more of its Directors is a member or employee, or in which they are interested, or between the Corporation and any corporation or association of which one or more of its Directors is a stockholder, member, director, officer or employee, or in which they are interested, shall be valid for all purposes, notwithstanding the presence of such Director or Directors at the meeting of the Board of Directors which acts upon, or in reference to, such contract or transaction and notwithstanding his, her or their participation in such action, if the fact of such interest shall be disclosed or known to the Board of Directors and the Board of Directors shall authorize, approve and ratify such contract or transaction by a vote of a majority of the Directors present, such interested Director or Directors to be counted in determining whether a quorum is present and to be counted in calculating the majority of votes necessary to carry such vote. This Section of this Article shall not be construed to invalidate any contract or other transaction which would otherwise be valid under the common and statutory law applicable thereto.

## **ARTICLE VII**

### **Officers**

**Section 7.1. Principal Officers.** The officers of the Corporation shall be chosen by the Board of Directors and shall consist of a President, a Treasurer and a Secretary. There may also be one or more Vice Presidents and such other officers or assistant officers as the Board shall from time to time create and so elect. The President shall be chosen from among the Directors.

**Section 7.2. Election and Terms.** Each officer shall be elected by the Board of Directors at the annual meeting thereof and shall hold office until the next annual meeting of the Board or until his or her successor shall have been elected and qualified or until his or her death, resignation or removal. Any

officer may be removed at any time, with or without cause, by vote of a majority of the whole Board, but such removal shall be without prejudice to the contract rights, if any, of the person so removed; provided, however, that election of an officer shall not of itself create contract rights.

Section 7.3. Vacancies. Whenever any vacancy shall occur in any office by death, resignation, removal, increase in the number of officers of the Corporation, or otherwise, the same shall be filled by the Board of Directors, and the officer so elected shall hold office until the next annual meeting of the Board or until his or her successor is duly elected or appointed.

Section 7.4. Removal and Resignation. Any officer may be removed from office with or without cause by the Board of Directors.

Section 7.5. Powers and Duties of Officers. The officers so chosen shall perform the duties and exercise the powers expressly conferred or provided for in these By-Laws, as well as the usual duties and powers incident to such office, respectively, and such other duties and powers as may be assigned to them by the Board of Directors or the President.

Section 7.6. President. The President shall have full charge of, and supervision and authority over, the affairs, business operations, and daily operations of the Corporation. He shall have full charge and supervision and direction of all employees and agents of the Corporation.

Section 7.7. Secretary. The Secretary: (a) shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Members, in books provided for that purpose; (b) shall attend to the giving and serving of all notices; (c) when required, may sign with the President or the Vice President in the name of the Corporation and/or attest the signature of either to, all contracts, conveyances, transfers, assignments, encumbrances, authorizations and all other instruments, documents and papers, of any and every description whatsoever, of or executed for or on behalf of the Corporation and affix the seal of the Corporation thereto; (d) may sign with the President or a Vice President all membership certificates of the Corporation and affix the corporate seal of the Corporation thereto; (e) shall, in general, perform all the duties incident to the office of Secretary; and (f) shall have such other powers and duties as may be conferred upon or assigned to him or her by the Board of Directors.

Section 7.8. Treasurer. The Treasurer shall have custody of all the funds and securities of the Corporation which come into his or her hands. When necessary or proper, he or she may endorse on behalf of the Corporation, for collection, checks, notes and other obligations, and shall deposit the same to the credit of the Corporation in such banks or depositories as shall be selected or designated by or in the manner prescribed by the Board of Directors. The Treasurer may sign all receipts and vouchers for payments made to the Corporation, either alone or jointly with such officer as may be designated by the Board of Directors. Whenever required by the Board of Directors, the Treasurer shall render a statement of the Corporation's cash account. The Treasurer shall enter or cause to be entered, punctually and regularly, on the books of the Corporation, to be kept by him or her or under his or her supervision or direction for that purpose, full and accurate accounts of all

moneys received and paid out by, for or on account of the Corporation. The Treasurer shall at all reasonable times exhibit the Corporation's books and accounts and other financial records to any Director during business hours. The Treasurer shall have such other powers and duties as may be conferred upon or assigned to him or her by the Board of Directors. The Treasurer shall perform all acts incident to the position of Treasurer, subject always to the control of the Board of Directors. The Treasurer shall if required by the Board of Directors, give, at the Corporation's request and at the Corporation's expense, such bond for the faithful discharge of his or her duties in such form and amount as the Board of Directors may require.

**Section 7.9. Assistant Secretaries.** The Assistant Secretaries shall assist the Secretary in the performance of his or her duties. In the absence of the Secretary, any Assistant Secretary shall exercise the powers and perform the duties of the Secretary. The Assistant Secretaries shall exercise such other powers and perform such other duties as may from time to time be assigned to them by the Board, the President, or the Secretary.

**Section 7.10. Delegation of Authority.** In case of the absence of any officer of the Corporation, or for any reason that the Board may deem sufficient, a majority of the entire Board may transfer or delegate the powers or duties of any officer to any other officer or officers for such length of time as the Board may determine.

**Section 7.11. Multiple Offices.** The offices of Secretary and Treasurer, or those of Vice President and Treasurer may be held by the same person.

## **ARTICLE VIII**

### **Indemnification**

**Section 8.1. Insurance for Directors and Officers.** The Board of Directors shall have, in its sole discretion, the power to purchase and maintain, as an expense of the Corporation, insurance on behalf of any person who is or was a Director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such.

**Section 8.2 . Limitation on Liability and Indemnification.** No person shall be liable to the Corporation for any loss or damage suffered by it on account of any action taken or omitted to be taken by such person in good faith as a Director, officer, employee or agent of the Corporation if such person:

a. exercised or used the same degree of care as an ordinary prudent person in a like position would use under similar circumstances; or

b. took or omitted to take such action in reliance upon information, opinions, reports or statements, including financial statements and other financial data, in each case, prepared or presented by any officer, employee, or committee of the Board of

Directors of the Corporation upon which such person does not serve, or counsel, public accountants or other professional or expert persons engaged by the Corporation; but such person shall not be considered to be acting in good faith if he or she has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

The Corporation shall indemnify any person, and his or her heirs and legal representatives, who shall be made a party to, or threatened with, any civil or criminal action, suit or proceeding by reason of the fact that he or she is or was a Director, officer, employee, or agent of the Corporation or of any other corporation, partnership, joint venture, trust or other enterprise with which he or she served in such capacity at the request of the Corporation or by reason of any of his or her acts or omissions in such capacity taken or omitted to be taken, for and in the interest of the Corporation or such other corporation, partnership, joint venture, trust or enterprise, in good faith and in the exercise of reasonable care. Such indemnification shall be against any and all liability and reasonable expenses, including attorneys' fees, actually and necessarily incurred in connection with such action, suit or proceedings, whether actual or threatened, or in connection with any appeal thereof. Any Director, officer, employee or agent who, in any such action, suit or proceeding shall have been wholly successful, on the merits or otherwise, shall be entitled to full and complete indemnification as a matter of right. Provided, however, such indemnification shall not apply to any action in which such person shall be deemed liable for negligence or misconduct in the performance of the duties which give rise to the litigation at issue.

The Corporation may also reimburse to any such Director, officer, employee or agent the amounts (other than amounts paid to the Corporation) of judgments, fines and penalties resulting from, and the reasonable costs of settlement and expenses, including attorneys' fees, actually incurred and connected therewith, of any such action, suit or proceeding if it shall be found by a majority of the members of the Board of Directors not involved in the matter of controversy (whether or not constituting a quorum), or by a majority vote of the Members of the Corporation, that such Director, officer, employee or agent had acted in good faith and in the exercise of reasonable care in the performance of his or her duty and the payment of such judgments, fines or penalties, whether resulting from a plea of nolo contendere or otherwise, and costs of settlement are in the interest of the Corporation; but no Director, officer, employee or agent shall be indemnified in relation to any matter as to which he or she shall be adjudged in any such action, suit or proceeding to be liable for negligence or misconduct in the performance of his or her duty to the Corporation or such other corporation, partnership, joint venture, trust or other enterprise. The Corporation may, in its discretion, advance any expenses to, or at its expense undertake the defenses of, any such Director, officer, employee or agent, but any amounts so advanced or expended shall be repaid to the Corporation by him or her to the extent that it is ultimately determined that such Director, officer, employee or agent is not entitled to indemnification or reimbursement. The rights of indemnification or reimbursement provided herein shall not be deemed exclusive of any other rights to which any Director, officer, employee or agent of the corporation or such other corporation, partnership, joint venture, trust or other enterprise may be entitled to by law or by authorization adopted by a

majority vote of all the voting shares of the Corporation then issued and outstanding after notice duly given.

ARTICLE IX

Corporate Books

Section 9.1. Place of Keeping. Except as otherwise provided by the laws of the State of Indiana, a copy of the following records shall be kept at the Corporation's registered office:

- a. The Articles and/or Restated Articles of Incorporation;
- b. The By-Laws and/or Restated By-Laws and all amendments thereto;
- c. The minutes of all meetings of Members and Board of Directors, for the past three (3) years;
- d. All written communications to Members for the past three (3) years;
- e. All financial statements furnished and/or published, including the current one, for the past three (3) years;
- f. A list of names and business addresses of the Corporation's current officers and Directors;
- g. A separate financial account of each Member; and
- h. A copy of the Corporation's most recent Annual Report filed with the Secretary of State.

Section 9.2. Inspection of Records.

- a. A Member of the Corporation and any Institutional Mortgagee of such Member's Lot are entitled to inspect, during reasonable hours at the Corporation's registered office or a reasonable location specified by the Corporation, any and all of the books and records of the Corporation, for proper purposes, provided the member gives the Corporation written notice of the Member's demand at least three (3) business days before the date on which the Member wishes to inspect the books and records.
- b. A Member's agent or attorney, if authorized in writing, has the same inspection rights as the Member represented.
- c. The Corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the Member. The charge may not exceed the estimated cost of production or reproduction of the records.

## ARTICLE X

### Assessments

As more fully provided in the Declaration, each Member is obligated to pay to the Corporation assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. As more particularly set forth in the Declaration, if an assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eleven percent (11%) per annum; the Corporation may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment; and no Owner may waive or otherwise escape liability for the assessments provided for in the Declaration by nonuse of the Common Area owned by the Corporation or abandonment of his or her Lot.

## ARTICLE XI

### Notice on Mortgagees

Section 11.1. Notice to Board of Directors. Any Member who mortgages the Lot to which such Member's membership is appurtenant shall promptly notify the Board of Directors of the name and address of his mortgagee and, if requested to do so, shall file a conformed copy of such mortgage with the Board of Directors. The Board of Directors shall maintain a suitable roster pertaining to such mortgages. Any mortgagee of any Lot that desires that a record of its name and address be maintained by the Corporation may forward such information to the Secretary for the purpose of assisting in compliance with the notice provisions of these By-Laws.

Section 11.2. Definition. As used in this Article, the term "mortgagee" shall mean any mortgagee and shall not be limited to Institutional Mortgagees, and the term "mortgage" shall include a deed of trust. As used generally by these By-Laws, the term "Institutional Mortgagee" shall include the insurer of any mortgage and the following mortgagees: banks, trust companies, insurance companies, savings and loan associations, pension funds, real estate investment trusts, FNMA, FHLMC, and any corporation, including a corporation of, or affiliated with, the United States Government, or any agency thereof.

## ARTICLE XII

### Contracts, Loans and Checks

The Board of Directors may authorize any officer or officers or agent or agents of the Corporation to enter into any contract or execute any instrument on its behalf. Such authorization may be general or confined to specific instances. Except as provided in these By-Laws, no officer, agent, or employee shall have any power to bind the Corporation or to render it liable for any purpose or amount unless so authorized by the Board of Directors.

## ARTICLE XIII

### Emergency By-Laws

Section 13.1. Definition. An emergency exists for purposes of this Article if a quorum of the Corporation's Board of Directors is prevented from meeting due to an extraordinary event.

Section 13.2. Provisions. The Emergency By-Laws may make all provisions necessary for management of the Corporation during an emergency, including establishing (1) the procedures for calling a meeting of the Board of Directors; (2) quorum requirements for the meeting; and (3) designation of additional or substitute Directors. All provisions of the regular By-Laws consistent with the Emergency By-Laws remain effective during the emergency. The Emergency By-Laws are effective only for the duration of the emergency.

Section 13.3. Binding Effect. The Corporation is bound by any action taken in good faith in accordance with the Emergency By-Laws. However, the Emergency By-Laws shall not impose liability on any Director, officer, employee or agent of the Corporation.

## ARTICLE XIV

### Amendments

Section 14.1. Articles of Incorporation. Subject to the express provisions of the Articles, the Corporation reserves the right to amend, alter, change or repeal any provisions contained in the Articles in the manner now or hereafter prescribed by the provisions of the Act or any other pertinent enactment of the General Assembly of the State of Indiana; and all rights and powers conferred hereby on Members, Directors or officers are subject to this reserved power.

Section 14.2. By-Laws. These By-Laws may, from time to time, be added to, changed, altered, amended or repealed or new By-Laws may be made or adopted by a majority vote of the whole Board of Directors at any meeting of the Board of Directors, if the notice or waiver of notice of such meeting shall have stated that the By-Laws are to be amended, altered or repealed at such meeting, or if all Directors at the time are present at such meeting, have waived notice of such meeting, or have consented to such action in writing.

A By-Law adopted or amended by the Board of Directors that changes the quorum or voting requirement for action by the Board of Directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

## ARTICLE XV

### Miscellaneous

Section 15.1. Notice and Waiver of Notice. Whenever any notice is required to be given to any Member or Director under the provisions of the

Indiana Not-For-Profit Corporation Act or under the provisions of these By-Laws or the Articles of this Corporation, said notice shall be deemed to be sufficient if given by depositing the same in a post office box in a sealed post-paid wrapper addressed to the person entitled thereto at his post office address as same appears on the books or other records of the Corporation, and such notice shall be deemed to have been given on the day of such mailing; but said notice shall also be deemed to be sufficient and to have been given and received, if given in any other manner or by any other means authorized or provided for elsewhere in these By-Laws. A written waiver of notice, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Section 15.2. Resignations. Any Director or officer of the Corporation may resign at any time. Each such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by either the Board of Directors or the President or the Secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

Section 15.3. Depositories. Funds of the Corporation not otherwise employed shall be deposited in such banks or other depositories as either the Board of Directors, the President or the Treasurer may select or approve.

Section 15.4. Signing of Checks, Notes, etc. In addition to and cumulative of, but without limiting or restricting, any other provision of these By-Laws which confer any authority relative thereto, all checks, drafts and other orders for the payment of money out of funds of the Corporation and all notes and other evidence of indebtedness of the Corporation shall be signed on behalf of the Corporation, in such manner, and by such officer or person as shall be determined or designated by the Board of Directors; provided, however, that if, when, after and as authorized or provided for by the Board of Directors, the signature of any such officer or person may be a facsimile or engraved or printed, and shall have the same force and effect and bind the Corporation as though such officer or person had signed the same personally; and, in the event of the death, disability, removal or resignation of any such officer or person, if the Board of Directors shall so determine or provide, as though and with the same effect as if such death, disability, removal or resignation had not occurred.

Section 15.5. Gender and Number. Wherever used or appearing in these By-Laws, pronouns of the masculine gender shall include the persons of the female sex as well as the neuter gender, and the singular shall include the plural wherever appropriate.

Section 15.6. Laws and Statutes. Wherever used or appearing in these By-Laws, the words "law" or "laws" or "statute" or "statutes", respectively, shall mean and refer to laws and statutes, or a law or a statute, of the State of Indiana, to the extent only that such is or are expressly applicable, except where otherwise expressly stated or the context requires that such words not be so limited.

Section 15.7. Headings. The headings of the Articles and Sections of these By-Laws are inserted for convenience of reference only and shall not be

deemed to be a part thereof or used in the construction or interpretation thereof.

ARTICLE XVI

The Indiana Not-For-Profit Corporation Act

The provisions of The Indiana Not-For-Profit Corporation Act of 1991, as amended, applicable to any of the matters not herein specifically covered by these By-Laws, are hereby incorporated by reference in and made a part of these By-Laws.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
ARLINGTON MEADOWS

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

RECITALE

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

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

DECLARATION

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

ARTICLE I

DEFINITIONS AND APPROVALS

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

a. "Association" shall mean Arlington Meadows Homeowner's Association, Inc., its successors and assigns, which has been or will be created as an Indiana not-for-profit corporation. Its membership shall consist of Owners who pay mandatory assessments for insurance and taxes, landscape maintenance, fertilizing and weed control of the Common Area.

b. "Board of Directors" shall mean the Board of Directors of Arlington Meadows Homeowner's Association, Inc.

c. "Common Area" shall mean those areas designated as common area on a Plat and set aside for conveyance to the Association.

d. "Development" shall mean the Real Estate.

e. "Development Date" shall mean the date upon which dwellings have been substantially completed on all Lots in the Development.

f. "Lot" shall mean any parcel of the Real Estate described as such and numbered upon a Plat.

g. "Mortgagee" shall mean any institutional holder, insurer or guarantor of any first mortgage on any Lot.

h. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to a Lot, including contract sellers, but excluding those persons having such interest merely as security for the performance of an obligation. The term "Owner" shall include the Declarant as the record owner of a Lot.

i. "Plat" shall mean a subdivision plat of the Development or a part thereof which is recorded in the Office of the Recorder of Marion County, Indiana, as the same may be hereafter supplemented by law or pursuant to this Declaration.

j. "Real Estate" shall mean the real estate described in Exhibit A attached hereto.

## ARTICLE II

### CHARACTER OF THE DEVELOPMENT

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

## ARTICLE III

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

Section 3.1 Diligence in Construction. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage. Every building whose construction or placement on any Lot is begun shall be completed within nine (9) months after the beginning of such construction or placement.

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

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

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

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

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

#### **ARTICLE IV**

#### **COMMON AREA**

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

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

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

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

**Section 4.3 Dedication of Common Area.** The Association shall have the right to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members (as hereinafter defined) or otherwise allowed pursuant to this Declaration, as amended, provided that no such dedication or transfer, except as allowed pursuant to this Declaration, shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of Members has been recorded.

ARTICLE V

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

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

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

Class A. Class A Members shall be all Owners with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no such event shall more than one vote be cast with respect to any Lot.

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

a. when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

b. on December 31, 2000.

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

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

Section 5.5 Responsibilities of the Association.

a. The Association shall maintain and repair the Common Areas, including improvements thereon.

b. The Association shall provide for the mowing of the Common Area's grass.

c. The Association shall provide for the operation of any facilities located or to be located within the Common Area.

d. The Association shall maintain all landscaping within the Common Area.

f. The Association may contract for management of the Common Area.

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

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

## ARTICLE VI

### COVENANT FOR MAINTENANCE ASSESSMENTS

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

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

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

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

Section 6.3 Maximum Annual Assessments.

- a. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum regular annual assessment on any Lot conveyed by Declarant shall not exceed Fifty Dollars (\$50) per Lot.
- b. From and after January 1 of such year, the maximum regular annual assessment may be increased each calendar year by no more than Twenty Percent (20%) above the maximum regular annual assessment for the previous year, without a vote of the Members.

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

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

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

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

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

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

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

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

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

## **ARTICLE VII**

### **GENERAL PROHIBITIONS**

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

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

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

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

## ARTICLE VIII

### INSURANCE

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

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

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

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

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

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

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

## **ARTICLE IX**

### **MORTGAGES**

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

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

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

## ARTICLE X

### GENERAL PROVISIONS

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

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

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

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

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

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

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

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

a. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area owned directly or indirectly by the Association for the benefit of the Owners. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area is not a transfer in the meaning of this subsection;

b. By act or omission change, waiver or abandon any scheme of regulations or their enforcement pertaining to the maintenance of the Common Area;

c. Fail to maintain fire and extended coverage on insurable Common Area owned by the Association on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement costs);

d. Use hazard insurance proceeds for losses to any Common Area for other than the repair, replacement, or reconstruction of the Common Area owned by the Association;

e. Change the voting rights, assessments, assessment liens or subordination of assessment liens, except as provided herein.

f. Change the manner in which reserves for maintenance, repair and replacement of Common Areas have been set up and previously maintained by the Association;

g. Change the rights to the use of the Common Area, except as provided for in this Declaration;

h. Any requirements for insurance or fidelity bonds set forth in this Declaration;

i. Any imposition of any restriction on an Owner's right to sell or transfer such Owner's dwelling unit;

j. Restoration and repair of the Common Area (after a hazard damage or partial condemnation) in a manner other than specified in the Declaration;

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

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

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

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

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

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

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

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

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

"DECLARANT"

DURA DEVELOPMENT CORPORATION,  
an Indiana corporation

By: 

Paul E. Shoopman, President

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF Madison

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

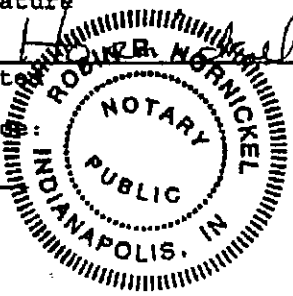
Witness my hand and Notarial Seal, this 17 day of May, 1995.

Robin R. Hornickel  
Notary Public - Signature

Robin R. Hornickel  
Notary Public - Printed

My Commission Expires:  
5-23-97

My County of Residence:  
Johnson



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

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