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HUGHES W. CARTER
RECORDER

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS FOR AUBURN MEADOW TOWNHOME ASSOCIATION, INC.**

This Declaration of Covenants, Conditions, Restrictions and Easements is made by Auburn Meadow Development, LLC (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter, the Property). Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within the Property. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Property and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property as is now or may be subjected to this Declaration.

NOW, THEREFORE, Declarant hereby declares that all real property described in Exhibit "A" shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, and easements which are for the purpose of protecting the value and desirability of and which shall run with the Property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, successors-in-title and assigns and shall inure to the benefit of each owner thereof.

**ARTICLE I
DEFINITIONS**

Section 1. "Assessments" shall mean Assessments for Common Expenses provided for herein or by any amendment which shall be used for the purposes of promoting health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Residential Units against which the Assessment is levied and of maintaining the Residential Units, Common Areas and Community Areas, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized below. The Assessment shall be levied equally against Owners of Residential Units for such purposes that are authorized by this Declaration or by the Board of Directors from time to time.

Section 2. "Association" shall mean and refer to Auburn Meadow Townhome Association, Inc., an Indiana non-profit corporation, and its successors and assigns. The "Board of Directors" or "Board" shall be the elected body having its normal meaning under Indiana Law. The Association shall be organized and governed in accordance with the Articles of Incorporation, By-laws and Rules and Regulations, attached hereto as Exhibits "B", "C" and "D", respectively.

Section 3. "Common Areas" shall mean those parts or parcels of the Property the title to which are conveyed from time to time by deed from Declarant to the Association, to be thereafter held and owned by the Association for the benefit of the Owners and the Residential Units.

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Section 4. “Common Expenses” shall mean and include the actual and estimated expenses of operating the Association; the cost of owning, maintaining, repairing and replacing the Common Areas, landscaping, and exterior of the Residential Units; the costs of the Community Association, including Community Assessments; and the cost of meeting the obligations of the Association under this Declaration, including any reasonable reserves for performing the obligations, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-laws and the Articles of Incorporation of the Association.

Section 5. “Community-Wide Standard” shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Project. Such standard may be more specifically determined and set forth by the Architectural Review Committee, or by the Board of Directors.

Section 6. “Developer” shall mean Auburn Meadow Development, L.L.C.

Section 7. “Mortgage” shall mean an instrument given as security to perform obligations, including a deed of trust.

Section 8. “Mortgagee” shall mean the Person to whom a mortgage is granted, including a beneficiary or holder of a deed of trust.

Section 9. “Mortgagor” shall mean the Person who grants a Mortgage, including the trustor of a deed of trust.

Section 10. “Occupant” shall mean and refer to one or more Persons or entities which may at any time be entitled to the use and possession of a Residential Unit, or any part thereof, by lease, license, contract or any other means, whether or not unlawful and shall include, without limitation, Owners, tenants, subtenants and their guests and invitees.

Section 11. “Owner” shall mean and refer to one or more Persons or entities who are record owners of a fee simple title to any Residential Unit which is a part of the Properties, including contract sellers, but excluding those having any interest merely as security for the performance of an obligation, and excluding the Declarant.

Section 12. “Person” means a natural person, a corporation, a partnership, trustee or other legal entity.

Section 13. “Project” shall mean the property owned by Declarant and held for Exhibit “A” hereto.

Section 14. “Property” shall mean and refer to all of the real property described in Exhibit “A” attached hereto, as amended from time to time.

Section 15. “Residential Unit” shall mean one of the parcels and the zero lot line home located or to be located thereon, which is a part of the Property intended for independent ownership for use and occupancy as a single family residence. The boundaries of Residential Units shall be the lot lines for the parcels of the Property conveyed by Declarant to the Owners. For the purposes of this Declaration, a Residential Unit shall come into existence when substantially complete or upon the issuance of a certificate of occupancy by the appropriate agency of the Town of Schererville, Indiana or other local government entity.

Section 16. “Subsequent Amendment” shall mean an amendment to this Declaration which adds additional property to that covered by this Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Subsequent Amendment to the provisions of this Declaration.

Section 17. "Community Areas" shall mean those parts or parcels within the Auburn Meadow Development of the Declarant which are owned by the Community Association, Auburn Meadow Community Association, Inc., for the benefit of the Owners and for the benefit of the Owners within Auburn Meadow Paired Cottage Home Association, Inc. and Auburn Meadow Terrace Home Association, Inc.

Section 18. "Community Assessments" shall mean and include the actual and estimated expenses of operating the Community Association; the cost of owning, maintaining, repairing and replacing the Community Areas which include a clubhouse, pool, walking trail and other improvements which are owned by the Community Association for the benefit of all Owners within the Auburn Meadow Development of the Declarant.

Section 19. "Community Association" shall mean or refer to Auburn Meadow Community Association, Inc., an Indiana non-profit corporation, and its successors and assigns.

Section 20. "Community Association Delegates" shall mean two (2) members of the Board of Directors of the Association elected by the Board designated as the Community Association Delegates, who shall represent the Association on the Community Association's Board of Directors.

ARTICLE II

PROPERTY RIGHTS AND OBLIGATIONS

Section 1. Party Wall Rights, Restrictions and Easements. Subject to any other or additional provisions contained in any written agreement between the parties affected, each wall which is built as part of the original construction of a Residential Unit and placed on the lot line of a Residential Unit shall constitute a party wall and to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and of liabilities for property damage due to negligence or willful acts or omissions shall apply thereto. In the event and to the extent that the center of any wall between Residential Units on and over such adjoining Residential Units shall encroach into or onto the adjacent Residential Unit, the Owner utilizing said party wall will have a perpetual exclusive easement appurtenant to his or her Residential Unit on and over such adjoining Residential Unit for the maintenance, repair and restoration of such wall and his or her Residential Unit to the extent that the same shall occupy such adjoining Residential Unit, and such wall shall be deemed a party wall for all purposes of this Declaration. The cost of reasonable repairs and maintenance of a party wall shall be shared equally by the Owners who make use of the wall. If a party wall is destroyed or damaged by fire or other casualty, the Owner who has shared the wall may restore it, and if the other Owner thereafter makes use of the wall, they shall contribute equally to the cost of the restoration thereof, without prejudice however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligence or willful acts of omissions. Notwithstanding any other provisions of this Declaration, any Owner who is by his or her negligence or willful act, or the negligence or willful acts of his or her occupancy causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to contributions from any other Owner under this Declaration shall be appurtenant to the land and shall pass to such Owner's successor in title. Easements are hereby declared and granted to Owners having a party wall to install, lay, operate, maintain, repair and replace any pipes, wires, ducts, conduits, public utility lines or structural components through the party walls of two or more Residential Units, whether or not such walls lie in all or in part within the boundaries of a Residential Unit. Every portion of a Residential Unit shall be burdened with an easement of structural support for the benefit of the other Residential Units.

Section 2. Easements of Ingress and Egress. Each Owner, as well as the lawful residents and Occupants of each Residential Unit, and their agents and contractors shall have and enjoy an easement for ingress and egress to and from their Residential Units, over and upon the lawn and landscaped areas of all Residential Units within a building which are connected in succession by party walls as provided in this

Declaration, for the purpose of providing access to all parts of such Residential Unit for all purposes and activities associated with the normal and reasonable residential use of the Residential Unit, including, but not limited to, the maintenance, repair and replacement of the exterior of the building located on the Residential Unit and all lawn and landscaped areas and sidewalks which are a part of the Residential Unit.

Section 3. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each adjacent Residential Unit due to the unintentional placement or setting or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of this Declaration) to a distance necessary to encompass any constructed encroachment, either now existing or arising in the future; provided, however in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, Occupant or the Association.

Section 4. Easements for Utilities, Etc. Declarant and Developer hereby reserve for itself and its designee (including without limitation, the Town of Schererville and any utility easements) upon, across, over and under the Residential Units and Common Areas for ingress, egress, installation replacing, repairing and maintaining cable television systems, master television antenna systems, and similar systems, walkways, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas and electricity. This reserved easement may be assigned by Declarant or Developer by written agreement upon such terms and conditions as are acceptable to Declarant or Developer. If this reserved easement is assigned to the Association, the Board shall, upon written request, grant such easements as may be reasonably necessary for the development of the Property.

Without limiting the generality of the foregoing, there are hereby reserved for the Town of Schererville, Indiana, easements across all Residential Units for ingress, egress, installation, reading, replacing, repairing and maintaining water meters.

Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on Residential Units, except as may be approved by the Association's Board of Directors or as provided in the development and sale by Developer. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement without conflicting with the terms hereof. The easements provided for in this Section shall in no way adversely affect any other recorded easement on the Property.

Section 5. Easement on Common Areas. Owners shall have an easement for use and enjoyment on the Common Areas, and Developer, Declarant and the Association grant each Owner an easement for full use and enjoyment, subject to the Association's right to suspend such easement while an Owner is in violation of this Declaration.

Section 6. Right of Entry. The Association shall have the right and license, but shall not be obligated, to enter into any Residential Unit for emergency, security and safety, which right may be exercised by the Association's Board of Directors, officers, safety, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Residential Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board. There is hereby granted to the Association, and its agents, employees, managers and independent contractors, a license to enter upon all Residential Units to the extent necessary or appropriate for the conduct of the Association's responsibility under Article IV.

Section 7. Easement on Community Areas. Owners shall have an easement for use and enjoyment of the Community Areas provided the Owners have paid all Assessments required under this

Declaration and are not otherwise in violation of this Declaration or the declaration of the Community Association.

Section 8. Easement for Construction and Development. All of the Property shall be subject to easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines and other public utilities for the convenient use and enjoyment of the Property. In addition, there is hereby reserved by the Declarant and its agents and employees, as easement for right of ingress, egress and regress on and across all of the Property for the purpose of construction of the improvements within the Property, including the right of temporary storage of construction materials. Declarant reserves blanket easements and the right to grant such specific easements over all of the Property as may be necessary in conjunction with the orderly development of the Property described in Exhibit A or any Subsequent Amendment to this Declaration.

ARTICLE III **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership. Every Owner, as defined in Section 12 of Article I, shall be deemed to have a membership in the Association. In the event the Owner of a Residential Unit is more than one (1) person or entity, votes and rights of use and enjoyment shall be as provided herein. In no event shall more than one (1) vote be cast for each Residential Unit.

Section 2. Voting. The Association shall have one (1) class of membership. Members shall be entitled on all issues to one (1) vote for each Residential Unit in which they hold an interest required for membership by Section 1 hereof. There shall be only one (1) vote per Residential Unit, and the vote for such Residential Unit shall be exercised as those Persons themselves determine and they shall advise the Secretary of the Association prior to any meeting as to that determination. In the absence of such determination, the Residential Unit's vote shall be suspended in the event more than one (1) person or entity seeks to exercise it.

Any Owner of Residential Units which are leased may, in the lease or other written instrument, assign the voting right appurtenant to that Residential Unit to the lessee, provided that a copy of such instrument is furnished to the Secretary prior to any meeting.

The voting rights of Members shall be subject to the Declarant's rights and provisions of Article XVI.

ARTICLE IV **MAINTENANCE, REPAIR AND REPLACEMENT**

Section 1. Association's Responsibility. The Association's responsibility for maintenance, repair and replacement of the Property shall be limited to the providing of all maintenance, repair and replacement of:

- a. The driveways and parking areas and shall include, but not limited to, all sealing, repairing, reconstruction, repaving, and snow and ice removal and the cleaning of such driveways and parking areas.
- b. Any sidewalks which Developer is required to construct for use by the public, if any.
- c. Any divided fences or hedges erected or placed between the Project and adjacent projects or developments by the Developer.

- d. Any Common Areas owned by the Association.
- e. Roadway easement, and entrance monument.
- f. Existing trees.
- g. Lawn and landscaping.
- h. Exterior painting of the Residential Units.
- i. Any other matters within the Property, including but not limited to other exterior items such as roofing, siding, windows, doors, etc., as determined by the Board of Directors of the Association on a community-wide basis. In no way shall this subparagraph create an affirmative obligation to perform such community-wide work.

Section 2. Owners Responsibility. Subject to Section 1 of this Article IV, all maintenance, repair and replacement of the Residential Unit and all structures, and other improvements located within the Residential Unit shall be the sole responsibility of the Owner thereof who shall perform such maintenance in a manner consistent with the Community-Wide Standard of the Project and the applicable covenants, except as and to the extent otherwise required by this Declaration, and the Articles of Incorporation, By-laws and Rules and Regulations of the Association. It shall be the obligation and responsibility of each Owner of a Residential Unit to cooperate in full and in good faith with each of the other Owners of Residential Units which are a part of the same building, with regard to performance of all maintenance, repair and replacement of portions of the building commonly shared but not maintained by the Association, including the cost thereof. For instance, if a main utility line (such as sanitary line) is shared, the cost of maintenance repair and replacement shall be shared equally. In the event of any dispute between or among Owners as to the foregoing obligation and responsibility, any one Owner shall have the right to require that such dispute be submitted to a simple majority decision of the Board of Directors of the Association, which decision shall be final and binding on all the Owners involved in that building.

ARTICLE V

INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association may, but shall not, under any circumstances, be obligated to, obtain and continue in effect adequate blanket all-risk casualty insurance in such forms as the Board of Directors deems appropriate for the full replacement cost of all structures and the Residential Units, as well as public liability insurance. If the Association elects not to obtain such casualty insurance, then each Owner shall obtain such insurance in accordance with Section 2 of this Article. Each Owner shall assume that the Association has elected not to acquire all-risk casualty insurance. All provisions of this Article shall apply to all policy provisions, loss adjustment and all other subjects of all policies of insurance whether such policies are obtained by the Association or the Owners, or both.

Each Owner shall also obtain a public liability policy covering the Residential Unit owned by such Owner, and shall name the Association and all of its members as additional insureds for all damages or injury caused by the negligence of such Owner. The public liability insurance policy shall have at least Three Hundred Thousand (\$300,000) dollar single person limit as respects to bodily injury and property damage, a Five Hundred Thousand (\$500,000) dollar limit per occurrence, and a Two hundred thousand (\$200,000) dollar minimum property damage limit.

Premiums for insurance obtained by the Association shall be a Common Expense of the Association and shall be included in the General Assessment, as defined in Article IX. Premiums for insurance obtained by Owners shall be paid by such Owners.

All casualty insurance coverage obtained by the Association or by any Owner shall be for the respective benefited parties, as further identified in B. below. Such insurance shall be governed by the provisions hereinafter set forth.

A. All policies shall be written with a company licensed to do business in Indiana and holding a rating of XI or better in the Financial Category as established by A.M. Best Company, Inc., if reasonably available, or if not available, the most nearly equivalent rating, and shall be for the full replacement cost. All such policies shall provide for a certificate of insurance for each Member to be furnished to the Association.

B. All policies on Residential Units shall be for the benefit of the Residential Unit Owners and their Mortgagees as their interests may appear. The policies may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

C. Exclusive authority to adjust losses under policies in force on Residential Units shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having any interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

D. In no event shall any insurance coverage obtained and maintained by the Association's Board of Director's hereunder be brought into contribution with insurance purchased by individual Owners, Occupants or their Mortgagees.

E. All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with the construction in the Lake County area.

F. The Association's Board of Directors and the Owner shall be required to make every reasonable effort to secure insurance policies that will provide the following:

1. A waiver of subrogation by the insurer as to any claim against the Association's Board of Directors, its managers, the Owners and their respective tenants, servants, agents and guests;
2. A waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;
3. That no policy obtained by the Association may be canceled, invalidated or suspended on account of any one or more individual Owners;
4. That no policy obtained by the Association may be canceled, invalidated or suspended on account of the conduct of any Director, officer or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its managers, any Owner or Mortgagee;
5. That any "other insurance" clause in any policy exclude Association and individual Owner's policies from consideration; and

6. That no policy may be canceled or substantially modified without at least ten (10) days prior written notice to the Association.

In addition to the other insurance required by this section, the Board shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent reasonably necessary, a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, and public liability insurance for all Common Areas with the same coverage's and limits as are required hereby for public liability insurance to be carried by Owners. The amount of fidelity coverage shall be determined in the director's best business judgment, but may not be less than three (3) months' Assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least (10) days' prior written notice to the Association.

Section 2. **Individual Insurance.** By virtue of taking title to a Residential Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each individual Owner shall carry blanket all-risk casualty insurance on the Residential Units and structures constructed thereon as provided for in Section 1 of this Article V, unless the Association carries such insurance, which it is not obligated to do. Each individual Owner further covenants and agrees that in the event of any loss of damage and destruction the proceeds of such insurance shall be used only in accordance with this Declaration. In the event that the structure is totally destroyed and by a vote of three-fourths (3/4) of all Members entitled to vote (not three-fourths (3/4) of a quorum), it is determined, subject to the further requirements of Section 4 of this Article V, not to rebuild or to reconstruct, the individual Owner shall clear the Residential Unit of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction. A decision not to rebuild or reconstruct shall under no circumstances relieve or discharge an Owner from the obligation to pay Assessments to the Association.

Section 3. **Disbursement of Proceeds.** Proceeds of insurance policies shall be paid to the Insurance Trustee to be disbursed as follows:

- a. If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repair or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction or, in the event no repair or reconstruction is made, shall be disbursed to the affected Owner or Owners and their Mortgagee(s) as their interests may appear. This is a covenant for the benefit of any Mortgagee of a Residential Unit and may be enforced by such Mortgagee.
- b. If it is determined, as provided for in Section 2 of this Article, that the damage or destruction for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for in Section 3.a. of this Article V.

Section 4. **Damage and Destruction.**

A. Immediately after the damage or destruction by fire or other casualty or any part of a Residential Unit, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Residential Units to substantially the same condition in which they existed prior to the fire or other casualty.

B. Any damage or destruction shall be repaired or reconstructed unless by a vote of at least three-fourths (3/4) of all Members entitled to vote (not three-fourths (3/4) of a quorum) a decision is made

within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction shall be repaired or reconstructed.

C. In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the Residential Unit shall be restored to its natural state by the Owners thereof and maintained as an undeveloped portion of the Project by the Association in a neat and attractive condition.

Section 5. **Repair and Reconstruction.** If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment against the Owner or Owners of Residential Units affected by such damage or destruction. Additional Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

Section 6. **Appointment of Insurance Trustee.** The Association, as Insurance Trustee, shall have the right to appoint any Federal or State bank which is qualified to offer trust services to the public as Insurance Trustee hereunder, and upon such appointment shall be relieved of all liability and responsibility as Insurance Trustee hereunder.

ARTICLE VII **NO PARTITION**

Except as is permitted in the Declaration or amendments thereto, there shall be no physical partition of a Residential Unit or any part thereof, nor shall any person acquiring any interest in any Residential Unit or any part thereof seek any such judicial partition unless the Property has been removed from the provisions of this Declaration. This Article shall not be construed to, prohibit the Board of Directors from acquiring title to real property which may not be subject to this Declaration.

ARTICLE VIII **CONDEMNATION**

Whenever all or any part of a Residential Unit shall be taken (or conveyed in lieu of and under threat of condemnation by the Owner) by any authority having the power of condemnation or eminent domain, each Owner and the Association shall be entitled to notice thereof. The award made for such taking shall be payable to the Insurance Trustee to be disbursed as follows:

If the taking involved a portion of a Residential Unit on which improvements have been constructed, then, unless within sixty (60) days after such taking a vote of at least three-fourths (3/4) of all Members entitled to vote (not three-fourths (3/4) of a quorum), the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Residential Unit to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Residential Unit, or if there is a decision made not to repair or restore, or if there are net funds remaining after such restoration or replacement is completed, then such net funds shall be disbursed to the Owner and its Mortgagee as their

interests may appear. This is a covenant for the benefit of any Mortgagee of a Residential Unit and may be enforced by such Mortgagee.

ARTICLE IX
RIGHTS, OBLIGATIONS AND POWERS OF THE ASSOCIATION

Section 1. Creation of Assessments. There are hereby created Assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors to be commenced at the time and in the manner set forth in this Article IX, Section 6. Assessments shall be allocated equally among all Residential Units within the Association and shall be for expenses determined by the Board to be for the benefit of the Association as a whole. Each Owner, by acceptance of his or her deed or recorded contract of sale, is deemed to covenant and agree to pay these Assessments, together with the interest rate of twelve percent (12%) per annum, costs and reasonable attorneys' fees, shall be a charge on the Residential Unit and shall be a continuing lien upon the Residential Unit against which each Assessment is made.

Each Assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligations of the person who was the Owner of such Residential Unit at the time of the Assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable which accrued prior to such acquisition of title. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors; unless the Board otherwise provides, the Assessments shall be paid in yearly installments.

Section 2. Computation of Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of the budget year (the budget year shall be from Oct. 1 through Sept. 30) and thirty (30) days prior to the meeting at which the budget shall be presented to the membership, to prepare a budget covering the estimated costs of operating the Association during the coming budget year. The budget shall include the Common Expenses, the Community Assessment, and appropriate reserves. The portion of the budget for the Community Assessment payable by the Owners shall be included in the Assessments, and the portion payable shall be paid to the Community Association and paid on a yearly basis. The Board shall cause a copy of the budget, and the amount of the Assessments to be levied against each Residential Unit for the following budget year to be delivered to each Owner at least fifteen (15) days prior to the meeting. The budget and the Assessments shall become effective when adopted by the Board of Directors.

Notwithstanding the foregoing, however, in the event the Board fails for any reason to determine the budget for the succeeding budget year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current budget year shall continue for the succeeding budget year.

The Board may not, without the vote or written consent of a majority of the votes of the Association, impose an Assessment per Residential Unit which is greater than one hundred fifty percent (150%) of the amount for the previous fiscal year, except for the Assessment levied for the first time and except for an Assessment caused by violation of this Declaration or the negligence or intentional misconduct of an Owner, its licensees or invitees.

The initial Assessment as of the time this Declaration was recorded is Eighty-Five (\$85.00) Dollars per month per Residential Unit.

Section 3. Special Assessments. In addition to the Assessments authorized in Section 1, the Association may levy a Special Assessment or Special Assessments in any year applicable to that year; provided, however, such Special Assessment for any purpose other than as a sanction against an Owner shall have the vote or written assent of fifty-one (51) percent of a quorum of Members entitled to

vote at a meeting called for the purpose. The Association may also levy a Special Assessment as a sanction against any Member to reimburse the Association for costs incurred in bringing a Member and his or her Residential Unit into compliance with the provisions of the Declaration, amendments thereto, the Articles of Incorporation, the By-laws and Rules and Regulations, which Special Assessment may be levied upon the vote of the Board.

Section 4. Liens for Assessments. When a notice of the lien has been recorded such Assessment shall constitute a perfected lien on each Residential Unit prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

Such lien, when delinquent, may be enforced by suit, judgment and foreclosure.

The Association, acting on behalf of the Owners, shall have the power to bid for the Residential Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period owned by the Association following foreclosure: (a) No right to vote shall be exercised on its behalf; (b) No Assessment shall be assessed or levied on it; and (c) each other Residential Unit shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessments that would have been charged such Residential Unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Assessments and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. The Community Association may not enforce the Assessments against the Owners for Community Assessments by a lien, but shall be entitled to file suit to recover a money judgement and to prohibit use and enjoyment of the Community Areas while assessment are delinquent.

Section 5. Capital Budget and Contributions. In the event that the Association becomes the owner of any capital asset, or is charged with the duty for the upkeep, maintenance and repair of a capital asset, the Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect to both the amount and timing by Assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and Assessment, as provided in Section 2 of this Article. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.

Section 6. Date of Commencement of Annual Assessments. The Assessments provided herein shall commence as to each Residential Unit on the day of the conveyance of title to an Owner by Declarant. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual Assessment shall be adjusted according to the number of months then remaining in that budget year. Declarant or Developer shall not be obligated to pay any Assessments.

Section 7. Subordination of the Lien to First Date of Trust and First Mortgages. The lien of the Assessments, including interest, late charges subject to the limitations of Indiana law, and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any Mortgage upon any Residential Unit. The sale or transfer of any Residential Unit shall not affect the Assessment lien. However, the sale or transfer of any Residential Unit pursuant to judicial or non judicial foreclosure of a first mortgage shall extinguish the lien of such Assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Residential Unit from lien rights for any Assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Residential Unit obtains title, his or her successors and assigns shall not be liable for the share of Common Expenses or Assessments by the Association chargeable to such Residential Unit which became due prior to the acquisition of title to such Residential Unit by such acquirer. Such unpaid share of Common

Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Residential Units, including such acquirer, his or her successors and assigns.

Section 8. Initial Assessment Payment. Upon acquisition of record title to a Residential Unit from Declarant, each Owner shall pay to the Association an amount equal to the monthly assessment for the remaining portion of that month and the next month to apply to the regular monthly assessment. Upon the acquisition of record title to a Residential Unit from Declarant, each Owner shall pay to the Association the following amounts: two months of the initial assessment for working capital and two months of the initial assessment for reserves which shall not be credited against the regular monthly assessment.

ARTICLE X **ARCHITECTURAL STANDARDS**

The Board of Directors and Developer shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction, decisions of the Architectural Review Committee established in Section 1 of this Article X. This Article may not be amended without the Declarant's written consent, so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

No construction, which term shall include within its definition staking, clearing, excavation, grading and other site work; no plantings or removal of plants, trees or shrubs; and no modifications, additions or alterations to the Property or Residential Units shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the Architectural Review Committee has been obtained.

Section 1. Architectural Review Committee. The Architectural Review Committee (the "ARC") shall consist of at least three (3) and no more than five (5) members, all of whom shall be appointed by the Board of Directors. The ARC shall have exclusive jurisdiction over all new or original construction, and all modifications, additions or alterations (including color) made on or to existing Residential Units and the open space, if any, appurtenant thereto, and Common Areas.

Section 2. Review Procedure. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such new or original construction and such modifications, additions or alterations shall be submitted to the ARC for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography and finish grade elevation. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her residence, or to paint the interior of his or her residence any color desired. In the event the ARC fails to approve or to disapprove such plans within one hundred eighty (180) days after submission, the plans shall be deemed approved.

ARTICLE XI **USE RESTRICTIONS**

Section 1. Residential Restrictions. The Property shall be used only for residential, personal, recreational and related purposes as may more particularly be set forth in this Declaration and amendments thereto. The Association, acting through the Board of Directors, shall have standing and the power to enforce use restrictions contained in any such declaration as if such provisions were a regulation of the Association. Home offices which do not increase traffic within the Property shall be considered

residential uses and related purposes if the Residential Unit is occupied as a residence by the persons using it as a home office.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Residential Units shall continue, it shall be expressly permissible for Declarant and Developer to maintain and carry on such facilities and activities as, in the sole opinion of Declarant and Developer, may be reasonably required, convenient or incidental to the construction or sale of such residences, including, but not limited to, business offices, signs, model units and sales offices, and the Declarant and Developer shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use Residential Units owned by the Declarant or Developer as models and sales offices. This Section may not be amended without the express written consent of the Declarant; provided, however the rights contained in this Section 1 shall be terminated upon the earlier of seven (7) years from the date this Declaration is recorded, or upon the Declarant's recording a written statement that all sales activity has ceased.

Section 2. Nuisances. No nuisances shall be allowed upon any Residential Unit nor shall any use or practice be allowed which would annoy residents or interfere with the peaceful possession and proper use of the Residential Units by its residents, or which will obstruct or interfere with the rights of other Owners or the Association. This provision shall not be construed to prohibit or limit the enforcement of any provision of the Declaration which does not constitute a nuisance, or to prohibit the Association from adopting Rules and Regulations prohibiting conduct which does not constitute a nuisance.

Section 3. Immoral, Improper, Offensive and Unlawful Uses. No immoral, improper, offensive or unlawful use shall be made of any Residential Unit nor any part thereof and all laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The respective responsibilities of Owners and the Association of complying with the requirements of governmental bodies regarding the maintenance, modification or repair of Residential Units shall be the same as provided in Article IV hereof.

Section 4. Uses Affecting Insurance Rates. An Owner shall not permit or suffer anything to be done or kept in a Residential Unit which will increase the insurance rates on any adjacent Residential Unit.

Section 5. Signs and Other External Items. No Owner shall display any sign (except temporary but tasteful "for sale" or "for rent" signs according to the terms as set forth in the Rules and Regulations or the Bylaws), advertisement or notice of any type on the exterior of a Residential Unit and no Owner shall erect any exterior antennae, aerials or awnings upon any Residential Unit. No clothesline or any similar device shall be allowed on any portion of any Residential Unit.

Section 6. Animals. An Owner may not keep, raise or breed any animals, livestock or poultry in or on a Residential Unit, provided, however that two (2) pets only shall be allowed to be kept in or on a Residential Unit, subject to the Rules and Regulations of the Association.

Section 7. Vehicles. No motor homes, campers, trailers, boats of any kind, or trucks in excess of ¼ ton capacity, shall be parked at any time on any Residential Unit, except inside closed garages in a manner that shall allow the garage door to close entirely.

Section 8. Leasing Restrictions. All lease or rental agreements must be in writing. Residential Units shall not be leased for an initial term of less than six (6) months, nor for less than thirty (30) days for any term thereafter.

Section 9. Basketball Equipment. No basketball hoops or backboards are permitted on any Common Area, lot or Residential Unit.

Section 10. Control of Dogs. Under no circumstances whatsoever shall any dogs be allowed on the properties which are a breed known to bite people, such as pit bulls, Doberman pinschers, German shepherds, Rottweiler, etc. Every person owning or having possession, charge, care, custody or control of any permitted dog shall keep such dog exclusively upon his or her own premises; provided, however, that such dog may be off the premises if it be under the control of a competent person and restrained by a chain, leash or other means of adequate physical control.

Section 11. Rules and Regulations. Rules and Regulations concerning the use of the Residential Units may be promulgated and amended by the Association acting by and made through its Board of Directors each of which shall be deemed to be incorporated herein by referenced and made a part hereof, as amended from time to time; provided, however, copies of all such Rules and Regulations shall be furnished to each Owner prior to the time that the same become effective. The initial Rules and Regulations are attached hereto, made a part hereof, and marked Exhibit "D". The Rules and Regulations set forth on Exhibit "D" and all rules and regulations promulgated from time to time shall be deemed to be reasonable and enforceable, so long as they bear any relationship to the safety, health, happiness and enjoyment of life of all the Owners, are in furtherance of a plan to provide for the congenial occupation of the Residential Units, to promote and protect the cooperative aspects of ownership, the value of the Residential Units, and/or facilitate the administration of the community as a first class, safe, healthy, happy, quiet and restful residential community, and are not arbitrary and capricious. The Board of Directors of the Association is hereby granted the specific power and authority to enforce said Rules and Regulations in accordance with the provisions of Article XII.

ARTICLE XII **ENFORCEMENT**

Each Owner and Occupant of a Residential Unit shall be governed by and shall comply with the terms of the Declaration and the Articles of Incorporation, By-laws, and the Rules and Regulations of the Association adopted pursuant thereto as they may be amended from time to time. A default or violation by an Owner or Occupant of a Residential Unit shall entitle the Association, Declarant, Developer or any other Owner or Occupant to the following remedies:

Section 1. Authority and Administrative Enforcement and Procedures.

A. **Authority.** Residential Units shall be used only for those uses and purposes set out in this Declaration, and subject to the Covenants, Conditions, Restrictions and Easements set forth herein, and in the By-laws and Rules and Regulations of the Association. The Board of Directors shall have the power and authority to impose reasonable Special Assessments in accordance with Article IX Section 3, which shall constitute a lien upon the Owner's Residential Unit and to suspend an Owner's right to vote or use the Common Areas, and to approve other appropriate sanctions in the event that it is determined in accordance with this Article XII that an Owner or Occupant has violated any provisions of this Declaration, the By-laws, or the Rules and Regulations as duly promulgated.

B. **Procedure.** The Board of Directors shall not impose a Special Assessment as a sanction, suspend the right to vote, or infringe upon any other rights of an Owner or Occupant for any such violations unless and until the following procedure is followed:

1. **Demand.** Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying: (a) the alleged violation; (b) the action required to abate the violation; and (c) a time period, not less than ten (10) days, during which the violation may be abated without further sanction.
2. **Notice.** If the violation continues past the period allowed in the demand for abatement without sanction, the Association shall serve the violator with written

notice of a hearing. The notice shall contain; (a) the nature of the alleged violation; (b) the time and place of the hearing, which time shall not be less than ten (10) days from the giving of the notice; (c) an invitation to attend the hearing and produce any statements, evidence and/or witnesses in his/her behalf and (d) the proposed sanction to be imposed.

3. Hearing. The hearing shall be held in executive session by the Board of Directors pursuant to the notice, affording the violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice, the invitation to be heard, the written result and statements of the sanction shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer or director who delivered such notice. The notice requirements shall be deemed satisfied if a violator appears at the meeting.

C. Sanctions. The Board of Director's power and authority to impose sanctions shall be governed by the following provisions:

1. All Special Assessments imposed upon a violator under this Article shall bear a reasonable relationship to the violation, considering all the circumstances, which may include, but shall not be limited to, the following:
 - a. The actual costs and expenses incurred by the Board of Directors and the individual directors in the exercise of the power and authority under this Article XII, and in otherwise attempting to remedy the violation.
 - b. The amount of actual damage done to the other Owners and Occupants and/or their Residential Units and/or to the Association arising out of the violation or the efforts to remedy the effects of the same.
 - c. The amount which would be reasonably required to compensate the Association for the disruption of and inconvenience to, the community, the Association or any Member thereof, or Occupant of a Residential unit.
 - d. The extent to which the violation is or was flagrant, and the extent to which the violator cooperated or hindered in any effort to remedy the violation.
2. All Special Assessment amounts imposed hereunder as a sanction shall be deemed to be a part of the General Assessment attributable to the Residential Unit occupied by the Violator, and shall be assessed against said Residential unit and its Owner as a Special Assessment to be due and payable on the date the next General Assessment would be due, and any such Special Assessments which are not paid as of the date shall become a lien on such Residential Unit, and shall be collected and enforced in the same manner as General Assessments.
3. Nothing herein contained shall be construed as granting to the Board of Directors the power of attorney to impose such a Special Assessment which is punitive in nature, or to suspend an Owner's right to vote, unless the Board of

Directors finds, by specific special findings of fact in accordance with the foregoing procedure, that the violator/s conduct was willful, malicious,

oppressive, and outrageous in nature. Said special findings of fact shall set forth all facts and circumstances.

4. All other sanctions imposed shall be reasonably related to the violation found.
5. The decision of the Board of Directors made in accordance with the foregoing procedures shall be final.

Section 2. Legal Remedies. In addition to the administrative remedies set forth in Article XII Section 1, the legal remedies may include, without limiting the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien, an action to enforce the sanctions imposed by administrative procedure, or any combination thereof. The prevailing party shall be entitled to recover the costs of any legal proceeding including reasonable attorneys' fees.

Section 3. No Waiver of Rights. The failure of the Association, Declarant, Developer, Occupant or an Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration, Articles of Incorporation, By-law's and Rules and Regulations or by law, shall not constitute a waiver of the right to enforce such right, provision, covenant or condition in the future.

Section 4. No Election of Remedies. All rights, remedies and privileges granted to the Association, Declarant, Developer, Occupant or any Owner pursuant to any terms, provisions, covenants or conditions of the Declaration, Articles of Incorporation, By-laws and Rules and Regulations or by law, shall be deemed to be cumulative, and the exercise of any one or more shall no deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges.

ARTICLE XIII **AMENDMENT**

The Declaration and the Articles of Incorporation, By-laws, and Rules and Regulations may be amended in the following manner:

Section 1. Declaration. Subject to Article XV, amendments to the Declaration shall be proposed and adopted as follows, provided however, that no amendment may revoke, remove or modify any right or privilege of the Declarant, without the Declarant's written consent.

A. **Notice.** Notice of the subject matter of any proposed amendment may be included in the Notice of any meeting of the Board of Directors of Owners at which any proposed amendment is to be considered.

B. **Resolution.** Except as provided in subparagraph D. hereof, a resolution to amend the Declaration may be adopted by the affirmative vote of not less than three-fourths (3/4) of the members (not three-fourths (3/4) of a quorum) at any regular or special meeting of the Members called and held in accordance with the By-laws; provided, however, that any such amendment must also be approved and ratified by not less than three-fourths (3/4) of the Board of Directors (not three-fourths (3/4) of a quorum).

C. **Recording.** The amendment shall not be effective until a certified copy thereof is recorded in the Office of the Recorder of Lake County, Indiana. A copy of any such amendment shall also be sent to each Owner and his or her Mortgagee by registered or certified mail; provided, however, the mailing of such amendment shall not constitute a condition precedent to the effectiveness of such amendment.

D. Amendments by Declarant. Notwithstanding any other provision of the Declaration, and in addition to any other right to amend elsewhere set forth herein, the Declarant alone may amend this Declaration, or the Articles of Incorporation, By-laws, and Rules and Regulations, without the consent of the Owners, the Association, the Board of Directors or any Mortgagee, or any other person, (1) to correct scrivener's errors, minor defects or omissions, or (2) to comply with the requirements of Indiana law, or (3) to comply with the requirements of any governmental agency, public authority, or title insurance company, or (4) to comply with the requirements of the Federal Home Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by each such entity, or (5) to add additional real estate by Subsequent Amendment or replat any real estate pursuant to Article XVII hereof. This subparagraph D. shall constitute an irrevocable special power of attorney to Declarant on behalf of all Owners, Mortgagees, and any and all other persons having an interest of any kind in the Property, for so long as Declarant owns any Residential Unit or until the expiration of five (5) years from the date on which this Residential Unit is recorded, whichever occurs first. The amendment shall be signed by the Declarant and it shall become effective upon the recording of a copy thereof in the Office of the Recorder of Lake County, Indiana. A copy of such amendment shall also be sent to all Owners and their Mortgagees in the manner provided in subparagraph C. hereof.

Section 2. Articles of Incorporation, By-laws, and Rules and Regulations. The Articles of Incorporation, By-laws, and Rules and Regulations of the Association shall be amended in the manner provided by such documents or by law.

ARTICLE XIV GENERAL PROVISIONS

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall insure to the benefit of and shall be enforceable by the respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding and the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same.

Section 2. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including counsel fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceedings (including settlement of any suit or proceedings, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such Officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a Common Expenses, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Perpetuities. If any of the covenants, conditions, restrictions, easements or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

ARTICLE XV MORTGAGEES' RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of first Mortgages on Residential Units. To the extent applicable, necessary, or proper, the provisions of this Article XV apply to both this Declaration and to the By-laws of Auburn Meadow Townhome Association, Inc. Where indicated, these provisions apply to "Eligible Holders", as hereinafter defined; provided, however, voting percentages set forth herein are subject to and controlled by higher percentage requirements, if any, set forth elsewhere in this Declaration for specific actions.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides written request (such request to state the name and address of such holder, insurer of guarantor and the Residential Unit address), to the Association (therefor becoming an "Eligible Holder"), will be entitled to timely written notice of:

- a. any proposed termination of the Association;
- b. any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Residential Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- c. any delinquency in the payment of Assessments or charges owed by an Owner of a Residential Unit subject to the Mortgage of such Eligible Holder, insurer or guarantor, where such delinquency has continued for a period of sixty (60) days;
- d. any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- e. any proposed action which would require the consent of Eligible Holders, as required in Section 2 of this Article.

Section 2. Mortgagee's Rights Respecting Amendments to the Declaration. To the extent possible under Indiana law, and notwithstanding the provisions of Article XIII, any amendment of a material nature must be approved by Eligible Holders representing at least fifty-one (51) percent of the votes of Residential Units that are subject to Mortgages held by Eligible Holders. An amendment to any of the following shall be considered material:

- a. voting rights;
- b. Assessments, Assessment liens, or subordination of Assessment liens;
- c. reserves for maintenance and repairs;
- d. boundaries of any Residential Unit;
- e. convertibility of Residential Units into Common Areas or vice versa;

- f. expansion of the Project (to include real estate not described in Exhibits "A" or not adjacent thereto), or the contraction of the Project or withdrawal of property to or from the Project;
- g. insurance or fidelity bonds;
- h. leasing of Residential Units;
- i. imposition or any restrictions on an Owner's right to sell or transfer his or her Residential Unit;
- j. a decision by the Association to establish self management when professional management had not been required previously by an Eligible Holder;
- k. restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Declaration;
- l. any action to terminate the legal status of the Project after substantial destruction or condemnation occurs, provided however, that any action to terminate the legal status of the Project for reasons other than substantial destruction or condemnation shall require the consent of Eligible Holder's representing sixty-seven (67) percent of the votes of Residential Units; or
- m. any provisions that expressly benefit mortgage holders, insurers or guarantors.

Section 3. Special FHLMC Provision. So long as required by FHLMC, the following provisions apply in addition to and not in lieu of the foregoing three Sections of this Article. Unless two-thirds (2/3) of the first Mortgagees or Owners give their consent, the Association shall not:

- a. change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner;
- b. by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Residential Units and of any Common Area;
- c. fail to maintain fire and extended coverage insurance, as required by this Declaration; or
- d. use hazard insurance proceeds for any Common Area losses for other than the repair, replacement or reconstruction of such.

The provisions of this Section 3 shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Owners where a large percentage vote is otherwise required for any of the actions contained in this Section.

Section 4. Mortgagee's Right to Cure. First Mortgagees may, jointly or singly pay taxes or other charges which are in default and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of the policy and first Mortgagees making such payment shall be entitled to immediate reimbursement from the Association.

ARTICLE XVI
DECLARANT'S RIGHTS

Section 1. Control by Declarant. In addition to any other right or privilege given or granted or reserved to Declarant and Developer under this Declaration, the Declarant and/or Developer shall have the right to elect all members of the Board of Directors of the Association, and all members of the ARC, for as long as the Declarant has any ownership in any of the Residential Units or until the expiration of five (5) years after the date on which this Declaration is recorded, whichever is later. The members elected by the Declarant and/or Developer need not be residents or Owners or Members.

Section 2. Absence of Warranty The Declarant specifically disclaims any warranty or representation in connection with the Property or this Declaration except as specifically set forth herein; and no Person shall rely upon any warranty or representation set forth herein. Any estimates of Assessments are believed to be accurate, but no warranty or guaranty is made or intended, nor may one be relied upon.

Section 3. Assessment Exemption. Declarant and Developer shall be exempt from any Assessment levied by the Association on any or all Residential Units owned by the Declarant, which are unoccupied and offered by the Declarant and Developer for the first time for sale or used as a model or sales office.

Section 4. Right to Amend Declaration. The Declarant shall have the right to amend the Declaration, and the Articles of Incorporation, By-laws and Rules and Regulations, in accordance with Article XIII Section 1 D.

Section 5. Transfer of Rights. Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Official Records of Lake County, Indiana.

Section 6. Litigation Against Declarant or Developer. The Association shall not commence any litigation against the Declarant or Developer until at least seventy-five (75%) percent of the Members have approved of that action in a meeting of the Members or in a written consent of the Members.

ARTICLE XVII
ANNEXATION OF ADDITIONAL PROPERTY

Section 1. Annexation Without Approval of Membership. As the Owner thereof, or if not the Owner, with the consent of the Owner thereof, Declarant shall have the unilateral right, privilege and option, from time to time at any time until the end of the fifth (5th) year after the recording of this Declaration, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of real estate within a one (1) mile radius by filing in the Official Records of Lake County, Indiana, an amendment annexing such real estate. Any such annexation shall be effective upon the filing for record of such Subsequent Amendment unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other person the said right, provided that such transferee or assignee shall be the Developer of at least a portion of said real estate described in this Section and that such transfer is memorialized in a written, recorded instrument.

Section 2. Amendment to this Article. This Article shall not be amended without the written consent of Declarant, so long as the Declarant owns any property described in Exhibit "A".

Section 3. Replatting. Declarant shall have and hereby reserves the right, at any time or from time to time, to file a replat of all or any part of the Property which is owned by Declarant or all or any real estate which is added to the Property by Subsequent Amendment.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed as of this 5 day of MARCH, 2002.

AUBURN MEADOW DEVELOPMENT, LLC

BY: Frederick A Olthof
ITS: PRESIDENT

STATE OF INDIANA >
>SS:
COUNTY OF LAKE >

ACKNOWLEDGMENT

I, Kimberly Jermolowicz Notary Public in and for said county in the State aforesaid, do hereby certify that Frederick A. Olthof of AUBURN MEADOW DEVELOPMENT LLC, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Frederick A. Olthof appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his or her own free and voluntary act, and as a free and voluntary act of AUBURN MEADOW DEVELOPMENT, LLC, for the uses and purposes therein set forth.

Given under my hand and seal this 5th day of March, 2002.

Kimberly Jermolowicz
Notary Public

My Commission Expires:

Jan. 24, 2007

County of Residence:

Lake



Exhibit A

Legal Description

Lot 24 – 29, 31 - 38, a plat of correction of Auburn Meadow Subdivision Phase I as recorded October 23, 2001, Book 90, Page 98, in the office of the Recorder, Lake County, Indiana.

EXHIBIT "B"

ARTICLES OF INCORPORATION OF
AUBURN MEADOW TOWNHOME ASSOCIATION, INC.

The undersigned incorporator desiring to form a corporation (hereinafter referred to as the "Corporation") pursuant to the provisions of the Indiana Nonprofit Corporation Act of 1991 (hereinafter referred to as the "Act"), executes the following Articles of Incorporation:

ARTICLE I
NAME

The name of the Corporation is Auburn Meadow Townhome Association, Inc.

ARTICLE II
PURPOSES

The purposes for which the Corporation is formed is:

Section 1. To establish an incorporated association (hereinafter the "Association, Inc.") to administer a residential community known as Auburn Meadow Paired Cottages located in Lake County, Indiana, pursuant to the Declaration of Covenants, Conditions, Restrictions and Easements for Auburn Meadow Paired Cottages (hereinafter the "Declaration").

Section 2. This Association is organized for the purpose of providing a convenient means of administering the residential community by the Owners thereof. The documents creating the community provide for the ownership, operation, management, maintenance and use of Residential Units as described in said documents.

Section 3. The Association shall not engage in any activities for the profit of its Members, and shall conduct its affairs in such fashion and for such purposes other than for the pecuniary gain of its Members, directors, officers or incorporators.

Section 4. The Association shall have all of the common law and statutory powers of a corporation nonprofit which are not in conflict with the terms of these Articles.

Section 5. The Association shall have all of the powers reasonably necessary to implement the purpose of the Association, including but not limited in the following;

- (a) To make and collect Assessments against Members.

EXHIBIT "B"

- (b) To use the proceeds of Assessments in the exercise of its powers and duties.
- (c) To maintain, repair, replace and operate the property in accordance with the Declaration.
- (d) To reconstruct improvements after casualty.
- (e) To make and amend rules and regulations respecting the use of Residential Units.
- (f) To enforce by legal means the provisions of the Declaration, these Articles, the By-laws of the Association, and the rules and regulations in accordance with Article IV of the Declaration.
- (g) To contract for the management of the Association and delegate to such contractor all powers and duties of the Association except such as are specifically required by the Declaration to have the approval of the Board of Directors or of the Members of the Association.
- (h) To carry insurance for the protection of Owners and the Association against casualty and liabilities.
- (i) To employ personnel for reasonable compensation to perform the services required for proper administration of the purposes of the Association.
- (j) To perform all other rights and obligations under the Declaration.

Section 6. All rights, powers and descriptions of purpose established by the Articles of Incorporation, shall be subject to the Declaration and all provisions contained therein as if fully set forth in these Articles, and shall further be subject to Indiana law governing nonprofit corporations.

Section 7. All funds and the titles of all properties acquired by the Association and the proceeds thereof shall be held only for the benefit of the Members in accordance with the provisions of the Declaration.

Section 8. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Declaration.

EXHIBIT "B"

ARTICLE III
MUTUAL BENEFIT CORPORATION

The Corporation is a mutual benefit corporation.

ARTICLE IV
REGISTERED AGENT AND PRINCIPAL OFFICE

Section 1. Registered Agent. The name and address of the Corporation's Registered Agent for service of process is:

Frederick A. Olthof
1945 Harder Court
Schererville, IN 46375

Section 2. Principal Office. The post office address of the principal office of the Corporation is :

1945 Harder Court
Schererville, IN 46375

ARTICLE V
MEMBERSHIP

Section 1. Classes of Membership, and Rights, Preferences and Limitations of Classes of Membership. There shall be one (1) class of Members, as set forth in Article III, Section 1 of the Declaration.

Section 2. Voting Rights of Classes. Voting rights of Members shall be set forth in Article III, Section 2 of the Declaration.

ARTICLE VI
DIRECTORS

Section 1. Number of Directors. The initial Board of Directors is composed of three (3) members. Provided, however, that the exact number of directors shall be prescribed from time to time in the By-laws of the Corporation; AND PROVIDED FURTHER THAT UNDER NO CIRCUMSTANCES SHALL THE MINIMUM NUMBER BE LESS THAN THREE (3). The Board of Directors shall be appointed by the Declarant or Developer until that power is terminated under the provisions of the Declaration.

Section 2. Names and Post Office Addresses of the Directors. The names and post office addresses of the initial Board of Directors of the Corporation are:

EXHIBIT "B"

Frederick A. Olthof
1945 Harder Court
Schererville, IN 46375

Todd M. Olthof
1945 Harder Court
Schererville, IN 46375

Scot F. Olthof
1945 Harder Court
Schererville, IN 46375

ARTICLE VII
INCORPORATOR

The name and post office address of the incorporator of the Corporation is:

Frederick A Olthof
1945 Harder Court
Schererville, IN 46375

ARTICLE VIII
STATEMENT OF PROPERTY (IF ANY)

A statement of the property, and an estimate of the value thereof, to be taken over by the Corporation at or upon its incorporation are as follows:

NONE

ARTICLE IX
PROVISIONS FOR REGULATIONS OF BUSINESS AND
CONDUCT OF THE AFFAIRS OF THE CORPORATION

Other provisions, consistent with the laws of this State, for the regulation and conduct of the affairs of the corporation, and creating, defining, limiting or regulating the powers of the Corporation, the directors of the Members of any class or classes of Members are as follows:

Section 1. The affairs of the Association, its management and operation shall be governed by the terms and provisions of the Declaration, these Articles of Incorporation and the By-laws and Rules and Regulations of this Corporation.

Section 2. The power to make, alter, amend or repeal the By-laws of the Corporation shall be vested in the Members of the Association, subject to the terms, provisions and conditions contained in the Declaration and the By-laws of this Corporation.

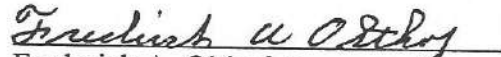
Section 3. Directors of the Association shall be elected at the annual meeting of the Members in the manner provided by the By-laws except for so long as the Declarant of the Declaration continues to legally or equitably own any of the Residential Units, the Board of Directors of the Association shall be elected by the Declarant and such Directors need not be residents of Residential Units or Owners; provided, however, that on and after five (5) years after the date of the recording of the Declaration the foregoing provisions shall not apply.

EXHIBIT "B"

Section 4. Every Director and every officer of the Association shall be indemnified by the Association in accordance with Article XIV, Section 2 of the Declaration.

Section 5. The Corporation will distribute its assets upon dissolution to: a) members of Auburn Meadow Paired Cottage Association, Inc., in pro rata amounts, or b) the State of Indiana in accordance with I.C. 23-17-30-1.

IN WITNESS WHEREOF, I, the undersigned, do hereby execute these Articles of Incorporation and certify the trust of the facts herein stated this 5 day of MARCH, 2002. I hereby verify subject to penalties of perjury that the facts contained herein are true.


Frederick A. Olthof, Incorporator