

Plat Record 34
pages 39-43

ARLINGTON PARK SECTION II

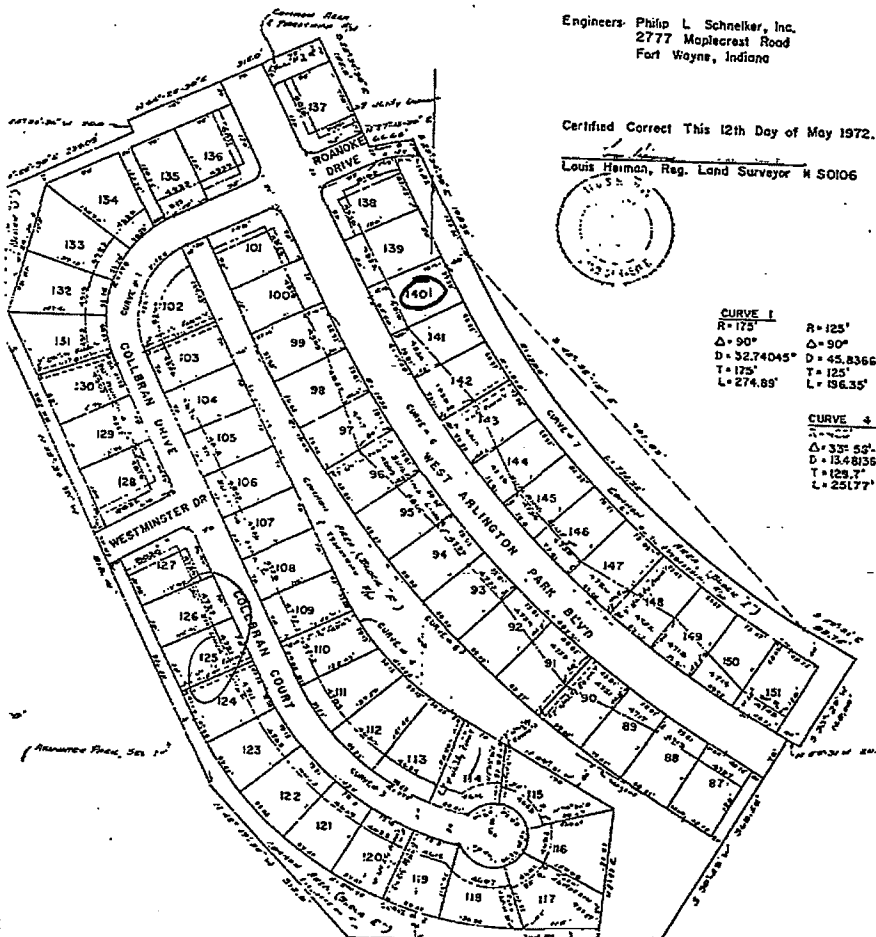
A Part of Section 25, Township 31 North, Range 13 East,
Allen County, Indiana.

Engineers: Philip L. Schnelker, Inc.
2777 Maplecrest Road
Fort Wayne, Indiana

Developers: Arlington Investment Corp.
4635 W. Arlington Park Boulevard
Fort Wayne, Indiana

Certified Correct This 12th Day of May 1972.
Louis Heiman, Reg. Land Surveyor N 50106

Confirmed By The Allen County Plan
Commission on This 12th Day of 1972.
David A. Smith
Zoning Administrator



CURVE 1 R=175' Δ=90° D=32.74045° T=175' L=274.89'	R=125' Δ=90° D=45.83664° T=125' L=196.35'	CURVE 2 R=340.55' Δ=65°-39'-30" D=10.59170° T=349.01' L=621.56'	CURVE 3 R=425' Δ=52°-18'-34" D=13.48126° T=208.7' L=388.01'	R=375' Δ=52°-18'-34" D=15.27898° T=184.15' L=342.35'
CURVE 4 R=1655' Δ=33°-56'-30" D=15.64835° T=123.7' L=251.77'	CURVE 5 R=1655' Δ=33°-56'-30" D=15.64835° T=123.7' L=251.77'	CURVE 6 R=1533' Δ=33°-56'-30" D=15.64835° T=123.7' L=251.77'	R=1465' Δ=33°-56'-30" D=15.64835° T=123.7' L=251.77'	R=1465' Δ=33°-56'-30" D=15.64835° T=123.7' L=251.77'
CURVE 7 R=1345' Δ=33°-56'-30" D=15.64835° T=123.7' L=251.77'	R=1305' Δ=33°-56'-30" D=15.64835° T=123.7' L=251.77'	CURVE 8 R=125' Δ=25°-40' D=4°-23' T=398.25' L=774.34' (Chord Definition) L=56.00'		

NOTE:
1. Alternate 20' & 30' Building Lines on All Corner Lots (30' One Side & 20' One Side, Builder's Choice).
2. 20' Radius on all Corner Lots.
3. All Curve Data Based on Highway (Arc) Definition, Except as Noted.

68009877

From an Bearings and Distances
to locate the center of the
curves on the West Line of
the R & S of Sec 25, Twp 31 N,
R 13 E.

ARLINGTON PARK, SECTION II

ARLINGTON INVESTMENT CORP., an Indiana corporation, by Theodore L. Brehm, its President, and Herbert R. Bergwall, its Secretary, does hereby declare that it is the owner of the following described real estate situated in Allen County, Indiana, to-wit:

A tract of land located in the Southwest Quarter (SW-1/4) of Section 23, Township 31 North, Range 13 East, Allen County, Indiana, more particularly described as follows:

Commencing at the intersection of the centerline of State Road #37 Project 240, 1930 and the West line of the East Half (E-1/2) of the Southwest Quarter (SW-1/4) of Section 23; thence North 00°-04' East 1086.62 feet to true point of beginning for this described parcel of land; thence South 88°-46' West 100.03 feet; thence North 42°-17'-30" West 312.0 feet; thence North 25°-34'-30" West 818.41 feet; thence North 166.47 feet; thence North 64°-25'-30" East 239.09 feet; thence North 25°-34'-30" West 20.0 feet; thence North 64°-25'-30" East 315.0 feet; thence South 25°-34'-30" East 185.0 feet; thence North 77°-15'-30" East 66.68 feet; thence South 25°-34'-30" East 198.35 feet to the P.C. of a curve to the left having a radius of 1305.0 feet; thence over and along said curve 774.34 feet to the P.T. of said curve; thence South 59°-31' East 88.75 feet along the tangent of said curve; thence South 30°-29' West 160.0 feet; thence North 59°-31' West 20.0 feet; thence South 30°-29' West 368.58 feet; thence South 88°-46' West 364.84 feet to the point of beginning and containing 23.13 acres more or less.

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and does hereby cause the real estate above described to be platted into lots, streets, pedestrian right-of-ways, common areas and easements in accordance with the plan and plat appended hereto and made a part hereof, to be known as

ARLINGTON PARK, SECTION II

a subdivision in Allen County, Indiana (the "Addition"). The lots in said Addition are numbered from 87 to 151 inclusive, and all dimensions are shown in feet and decimals of a foot on the plat.

The undersigned does hereby declare and provide that the lots and easements platted as aforesaid shall be

subject to and impressed with the covenants, agreements, restrictions, easements and limitations hereinafter set forth, and they shall be considered a part of every conveyance of land in said Addition without being written therein. The provisions herein contained are for the mutual benefit and protection of the owners present and future of any and all land in said Addition, and they shall run with and bind the land and shall inure to the benefit of and be enforceful by the owners of any land included therein, their respective legal representatives, successors, grantees and assigns. The owner or owners, present or future, of any land included in said Addition shall be entitled to injunctive relief against any violation or attempted violation of the provisions hereof and also damages for any injury resulting from any violations thereof, but there shall be no right of revision, re-entry or forfeiture of title resulting from any violation.

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PROTECTIVE COVENANTS, RESTRICTIONS AND LIMITATIONS

1. Definitions. The terms hereinafter set forth shall have the following meanings:
 - a. "Developer" shall mean Arlington Investment Corp., its successor or successors in interest or any person, firm or corporation designated by it or its said successor or successors.
 - b. "Lot" shall mean either any of said lots as platted or any tract or tracts of land as conveyed originally or by subsequent owners, which may consist of one or more lots or parts of one or more lots as platted upon which a dwelling or other structure may be erected in accordance with the restrictions hereinafter set forth.
 - c. "Living Unit" shall mean any portion of a building designated and intended for use and occupancy as a residence by a single family.
 - d. "Owner" shall mean and refer to the holder, whether one or more persons or entities, of the fee simple title to any lot or living unit situated in the Addition.

e. "Lessee" shall mean and refer to a person leasing from an Owner, whether one or more persons or entities, of any "Living Unit" situated in the Addition.

f. "Association" shall mean and refer to the Arlington Park Association.

g. "Member" shall mean any person who may be entitled and obligated to hold one or more memberships in the Arlington Park Association.

h. "Membership" shall mean any membership in the Arlington Park Association entitled to one vote and one assessment as hereinafter set forth. A member may hold one or more memberships.

i. "Common Area" shall mean and refer to those areas of land shown on any recorded subdivision plat and intended to be devoted to the common use and enjoyment of the Owners and Lessees in the Addition.

51 j. "Pedestrian Right of Way" shall mean any area which is shown on the recorded plat of said Addition for the purpose of a pedestrian traffic system and intended to be devoted to the common use and enjoyment of the Owners and Lessees in the Addition, subject to utility rights as hereinafter provided.

k. "Street" shall mean any street, avenue, roadway, cul de sac or boulevard of whatever name which is shown on the recorded plat of said Addition, and which has been heretofore and is hereby, dedicated to the public for the purpose of a public street or for park or boulevard purposes.

l. "Architectural Control Committee" shall mean the body designated herein to review plans and to grant or withhold certain other approvals in connection with improvements and developments.

2. Use. No lot shall be used except for residential purposes. No buildings shall be erected, altered, placed or permitted to remain, on any lot other than one detached

dwelling for use by a single family. Each dwelling shall include not less than a two-car garage, which shall be constructed as a part of said structure and attached thereto.

3. Driveways. All driveways from the street to the garage shall be of concrete and not less than sixteen (16') feet in width.

4. Minimum Area. No dwelling shall be erected or permitted on any lot having a ground floor area upon the foundation, exclusive of open porches, breezeways or garage, of less than one thousand three hundred (1,300) square feet in the case of a one-story dwelling, nor less than eight hundred fifty (850) square feet for a dwelling of more than one-story.

5. Building Lines. No dwelling or structure (including a fence or wall) shall be erected, placed or located on any lot nearer to the front lot line (or nearer to the side lot line on corner lots) than the minimum building set-back line as shown on the attached plat. No dwelling or structure shall be located nearer than five (5) feet to any side lot line, provided that the combined width of both side yards shall not be less than a distance equal to twenty percent (20%) of the lot width at the building line. No dwelling or structure shall be located on any interior lot nearer than fifteen (15) feet to the rear lot line. On a corner lot, no building or structure shall be located nearer than a distance of ten percent (10%) of the lot width to the interior lot line and the combined width of both side yards shall not be less than a distance equal to twenty-five percent (25%) of the lot width. No tree, shrub, planting or other obstruction shall be permitted which obstructs a clear view at intersections.

6. Minimum Lot Area. No dwelling or structure shall be erected or permitted on any lot, having a width of less than sixty-five (65) feet at the minimum building set-back line, nor an area of less than seven thousand two hundred (7,200) square feet. Developer, its successors and assigns, may alter the size or shape of said lots as platted, provided that no dwelling or other structure shall be erected, placed,

or maintained upon any lot which does not conform to the restrictions herein set forth, without express approval of the Allen County Plan Commission.

7. Yard Light. Each dwelling will cause a yard light or other illuminating device to be installed in the front yard fifteen (15) feet (plus or minus one foot) from the street curb. Such yard light or illuminating device will be of such design and construction as shall be approved by the Architectural Control Committee; said Committee shall also have the authority to approve a change in the location of said yard light or illuminating device.

8. Signs. No sign shall be erected or permitted, except one professional sign of not more than one foot square, or one sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

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9. Fences. No wire, metal or chain link fences will be permitted on any lot. Chain link back stops for play areas owned and maintained by Arlington Park Association will be permitted.

10. Antennas and Appurtenances. Antennas for television or radio receiving or transmitting or any other appurtenance attached or detached from the dwelling will not be permitted if they extend six (6) feet above the top roof line without the written approval of the Architectural Control Committee.

11. Trees. Any lot not having at least two (2) virgin trees remaining after construction of the dwelling will have planted at completion of construction, a minimum of two (2) trees with at least a one inch (1") diameter trunk and/or eight feet (8') tall, with one (1) planted in front of the house and one (1) in the rear.

12. Nuisances. No use shall be permitted which is offensive by reason of odor, fumes, dust, smoke, noise or

pollution or which constitutes a nuisance or which is hazardous by reason of fire, explosion or in violation of the laws of the State of Indiana or any subdivision thereof. No lot shall be used for the purpose of raising, breeding or keeping animals, livestock or poultry except as household pets, providing they are not kept, bred or maintained for any commercial purpose. All fuel or oil storage tanks shall be installed underground or located within the main structure of the dwelling, its basement or attached garage.

13. No Temporary Dwelling. No structure of a temporary character, trailer, boat, boat trailer, camper, or camping trailer, mobile home, travel trailer, motor home, basement, tent, garage, barn, tool shed, or other outbuilding shall be either used or located on any lot or used as a residence either temporarily or permanently. One accessory building may be approved for each lot, the type and location to be approved by the Architectural Control Committee.

14. Common Areas. Certain playgrounds, flood control areas, pedestrian underpasses, greenways and pedestrian right-of-ways designated on the plats shall be installed for the benefit of all the Owners and Lessees in Arlington Park. The same will be deeded or transferred to the Arlington Park Association and each Owner and Lessee shall have a right and easement of enjoyment in and to said Common Areas; provided that certain of the pedestrian right-of-ways as designated on the plat shall also be reserved as utility easements, as set forth in Paragraph 16 hereof, and shall be subject to all the terms and conditions as provided in said Paragraph 16. The Developer may retain legal title to the Common Areas until such time as it has completed improvements thereon, after which time it shall convey the same to the Association and the Association shall accept said conveyance and thereafter be responsible for the maintenance thereof. The rights and easements of enjoyment in the Common Areas shall be subject to the following:

a. The right of the Developer to borrow money and to mortgage any part or parts of Arlington Park in connection therewith.

b. The right of the Association, as provided in its Articles and By-Laws, to suspend the enjoyment of any Member for any period during which any assessment remains unpaid.

c. The right of the Association 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 Board of Directors of the Association, and subject to acceptance of such assignee.

51 15. Approval of Improvements by Architectural Control Committee. In order to maintain harmonious structural design and lot grades, no dwelling building or improvements shall be erected, permitted or altered on any lot (and construction shall not be commenced) until the construction plans and specifications, and a site plan showing the location of the structure on said lot and the grade elevations have been approved by the Architectural Control Committee. The Architectural Control Committee shall be comprised of three (3) members, with these members to be designated by the Developer initially. The Developer shall have the right, at such time as it may elect, to relinquish its right to designate the members of the Architectural Control Committee to the Association. Two sets of plans of each improvement, with detailed front, side and rear elevations and floor plans showing square footage and grade elevations, shall be submitted to the Architectural Control Committee at the Developer's office or such other place as may be designated. The Committee's approval or disapproval of said plans shall be in writing; in the event the Committee, or its designated representative, shall fail to approve or disapprove said plans within thirty (30) days after all necessary instruments, documents and other in-

formation have been given, then approval to the request as submitted shall be deemed to have been given. The improvements as shown upon said plans shall be substantially completed before said building shall be used or occupied as a dwelling. All improvements shall be constructed in accordance with the plans and specifications as approved by the Architectural Control Committee and any improvements not so constructed shall be subject to immediate removal at owner's expense. The provisions hereinbefore provided for violation or attempted violation of any of these covenants and restrictions shall be applicable hereto. In addition, before any lot or tract within the Addition may be used or occupied, said user or occupier shall first obtain the Improvement Location Permit and Certificate of Occupancy required by the Allen County Zoning Ordinance. Further, before any living unit within the Addition shall be used and occupied, the Developer shall have installed all improvements serving the lot whereon said living unit is situated, as set forth in Developer's plans filed with the Allen County Plan Commission.

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16. Easements. Easements are hereby expressly reserved and dedicated with dimensions, boundaries and locations as designated on the attached plat for the installation and maintenance of public utilities (including but not limited to, water, gas, telephone, electricity, sanitary sewer, and any other utilities of a public or quasi-public nature) and sewer and drainage facilities.

a. Any utility company and Developer, their successors and assigns, will have the right to enter upon said easements for any lawful purpose. All easements shall be kept free at all times of permanent structures except improvements installed by Developer or an authorized utility and removal of any obstruction by a utility company shall in no way obligate the company to restore the obstruction to its original form. The utility will restore any improvement installed by Developer or other authorized utility.

b. No buildings or structures located in the Addition shall be connected with distribution facilities provided by electrical, television or telephone services, except by means of wires, cables or conduits situated beneath the surface of the ground (except such poles and overhead facilities that may be required at those places where distribution facilities enter and leave the Addition, and except for such housings, pedestals or facilities as may be appropriate for connection of utility services for individual lot owners). Nothing herein shall be construed to prohibit street lighting or ornamental yard lighting services by underground wires or cables.

51 c. The utility operating the sewer lines and sewage disposal plant for said subdivision shall have jurisdiction over the installation of all sewer connections and the same shall be installed to the property lines of each lot by the developers. No individual water supply system, or individual sewage disposal system, shall be installed, maintained or used in the Addition. No rain or storm water run-off from roofs, street pavements or otherwise, or any other surface water, shall at any time be discharged into, or permitted to flow into, the sanitary sewer system, which shall be a separate sewer system from the storm water and surface water run-off system. No sanitary sewage shall at any time be discharged or permitted to flow into the storm water and surface water run-off sewer system.

17. Arlington Park Association. There will be organized by the Developer forthwith an incorporated not-for-profit association, only one such association to be recognized and approved by the Developer, with the same to be known as the Arlington Park Association.

a. Membership. One membership shall be created for each lot or living unit planned in Arlington Park. Memberships will transfer from the Developer to the grantee upon delivery of the deed, or in the case of a multi-family construction, at such time as the Architectural Control Commit-

tee has approved the grantee's plans, with one such membership to be transferred for each living unit to be constructed upon the land conveyed. The Developer's plans presently provide for the construction of two thousand two hundred seven (2,207) living units in Arlington Park, which will be voted by the Developer until transferred as hereinafter provided.

b. Membership Transfer. Memberships will pass from the Developer to his grantee with the conveyance of the land. In the case of the conveyance of land to be used for multi-family construction, said memberships will not transfer to the grantee until the Architectural Control Committee has approved the grantee's plans, and then one (1) membership for each living unit to be constructed on the land conveyed, will be transferred from the Developer to the grantee.

c. Continuing Membership. The purchaser of any lot or living unit in Arlington Park shall be a member of said Association and shall continue to be a member of said Association so long as he continues to be the owner of a lot or living unit in Arlington Park for the purposes herein mentioned. Membership shall pass with the ownership of the land or living unit.

d. Transfer of Membership Rights and Privileges. Each owner, or in lieu thereof (and with the written consent of such owner to the Association) each Lessee of a living unit, shall be a member of the Association and have the right to the owner's vote and privileges. Membership, where assigned to a Lessee, will pass with the lease except if the owner withdraws his consent in writing to the Association. The owner may withdraw his membership assignment to the Lessee at his discretion by a sixty (60) day notice in writing to the Association.

18. Assessments. Developer, for each lot and/or living unit owned by it within the Addition, hereby covenants, and each owner of any lot or living unit, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or conveyance, shall be deemed to covenant and agree

to pay to the Arlington Park Association, Maintenance Fund and/or Club Operating assessments and charges, as hereinafter provided.

a. Maintenance Fund. The "Maintenance Fund" Assessment shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of residents of the Addition and, in particular, for the improvements and maintenance of the greenways, sidewalks, playgrounds and all other Common Areas, including but not limited to, repair, maintenance, the cost of labor, equipment and materials, supervision, security, lighting, lawn care, snow removal, insurance, taxes, and all other things necessary or desirable in the opinion of the Members of the Association in connection therewith.

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The Maintenance Fund Assessment as herein provided shall commence to accrue and become a lien upon any said lots or living units as soon as title thereto has been divested from Developer, or when a dwelling or living unit shall be erected thereon, whichever shall first occur, and shall be payable on the first day of January of each year thereafter. All assessments shall be determined by and paid to the Association and the Association shall be responsible for carrying out the purposes of these assessments.

The amount of said Maintenance Fund Assessment is established as follows:

(i) Until the year beginning January 1, 1975, the annual assessment shall be the sum of Twenty-Four Dollars (\$24.00) per lot or living unit.

(ii) From and after January 1, 1975, the annual assessment may be increased for the next succeeding three (3) years, by vote of the Memberships of the Association as hereinafter provided, and again at the end of each such period of three (3) years, for each succeeding three

(3) year period. The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount.

(iii) Subject to the limitations hereinbefore set forth, the Association may change the maximum amount of the assessment for any such three (3) year period, provided that any such change shall have the assent of two-thirds (2/3) of the Memberships of the Association who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which has been sent to all Memberships at least thirty (30) days in advance, and with the purpose of the meeting set forth therein. At any such meeting, a quorum of not less than fifty percent (50%) of all Memberships entitled to vote shall be required.

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b. Club Operating Assessment. The Developer plans to construct a clubhouse within Arlington Park, which clubhouse will contain and provide various social recreational and other facilities. At such time as construction on said clubhouse is substantially completed, the Club Operating Fund will commence to accrue and will become a lien upon all lots or living units in Arlington Park, except as hereinafter provided. For any lots that a living unit has not been erected thereon at the time of substantial completion of the clubhouse, such assessment will commence to accrue and become a lien at such time as a living unit has been erected on such lot. Said Club Operating Fund assessment shall be payable on the first day of January of each year thereafter. All assessments shall be determined by and paid to the Association and the Association shall be responsible for carrying out the purposes of these assessments.

The amount of said Club Operating Fund Assessment is established as follows:

(i) The assessment shall be in the sum of Forty Eight Dollars (\$48.00) per lot or living unit for the year initiated and for a period of three (3) years thereafter.

(ii) From and after the end of the initial three (3) year period the annual assessment may be increased for the next succeeding three (3) years by a vote of the Memberships of the Association, as hereafter provided, and again at the end of each said period of three (3) years, for each succeeding three (3) year period. The Board of Directors of the Association may, after consideration of current operation and club maintenance costs and future needs of the club, fix the actual assessment for any year at a lesser amount.

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(iii) Subject to the limitations hereinbefore set forth, the Association may change the maximum amount of the assessment for any such three (3) year period, provided that any such change shall have the assent of two-thirds (2/3) of the Memberships of the Association who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which has been sent to all Memberships at least thirty (30) days in advance, and with the purpose of the meeting set forth therein. At any such meeting, a quorum of not less than fifty percent (50%) of all Memberships entitled to vote shall be required.

(iv) Said Club Operating Fund shall be used exclusively for the purpose of operating and maintaining said clubhouse and all recreational facilities therein or used in connection therewith, including but not limited to, repair, maintenance, cost of labor, equipment, supervision, taxes, insurance, and all other things necessary or desirable in the opinion of the Members of the Association in

connection therewith.

51 c. Collection. Such Maintenance Fund and Club Operating Assessments, together with interest thereon and costs of collection as hereafter provided, shall be a lien upon the property against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection, shall also be the personal obligation of the person or persons who was the owner of such property at the time when the assessment fell due. The obligation of the assessment is upon the owner of the property or the living unit and is not transferred, even though the owner may have transferred the membership and voting rights in the Arlington Park Association, as hereinbefore provided. If the assessments are not paid on the due date, then such assessments shall be a continuing lien on the property, which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain a personal obligation and shall not pass to his successors in title unless expressly assumed by them. If the assessment is not paid within sixty (60) days after due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action against the owner personally obligated to pay the same, or foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing such action. The lien of the assessments as provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the property, taxes and assessments for public improvements.

19. Duration and Alteration. These protective covenants, restrictions and limitations shall be construed as, and shall be, covenants running with the land and shall be binding upon all Owners and Lessees of land in said Addi-

tion and all persons claiming under them. They shall continue in existence for a period of fifty (50) years from the date of the recording hereof and thereafter shall be automatically extended for successive periods of ten (10) years each. The protective covenants, restrictions and limitations (but not the easements) may be changed, abolished or altered in part by written instrument signed by the owners of not less than seventy-five percent (75%) of the memberships of the Arlington Park Association; and may be changed, altered or amended by the Developer within two (2) years from and after the date of recording hereof.

20. Severability. Invalidation of any one of these provisions shall in no way affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, ARLINGTON INVESTMENT CORP. by its President, Theodore L. Brehm, and its Secretary, Herbert R. Bergwall, has hereunto set its hand and seal this 4th day of May, 1972.

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ARLINGTON INVESTMENT CORP.

ATTEST:

By Herbert R. Bergwall Theodore L. Brehm
Herbert R. Bergwall, Theodore L. Brehm, Its Pres.
Its Secretary

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

Before me, the undersigned, a Notary Public in and for said County and State, this 4th day of May, 1972, personally appeared THEODORE L. BREHM and HERBERT R. BERGWALL, to me known, and known by me to be the persons, who as President and Secretary, respectively, of ARLINGTON INVESTMENT CORP., the corporation which executed the foregoing instrument, signed the same and acknowledged to me that they did so sign the same in the name and on behalf of said corporation as such officers, respectively; that the same is their free act and deed as such officers, respectively, and the free and corporate act and deed of said corporation; and that they were duly authorized thereunto by the Board of Directors of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and

official seal the date above written.

Jacqueline D. Stary
Notary Public

My Commission Expires:

March 13, 1976

APPROVAL: ARLINGTON PARK SECTION II

ALLEN COUNTY PLAN COMMISSION
approved May 24, 1972

M. Amos

Robert Hatterley

ALLEN COUNTY SURVEYOR
approved 21 June, 1972

APPROVED FOR DRAINAGE ONLY

John J. Ford

BOARD OF PUBLIC WORKS,
FORT WAYNE, INDIANA
approved JUNE 29, 1972

ALLEN COUNTY BOARD OF COMMISSIONERS
approved June 20, 1972

Chas. W. ...

Rich ...

Gene D. Brownell

Ronald L. Bonar

William ...

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Prepared by Maclyn T. Parker, Parker, Hoover & Roush, 203
Strauss Building, Fort Wayne, Indiana 46802.

Recorded July 10, 1972 at 1:00 P.M.

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73-11022

FIRST AMENDMENT
TO
PROTECTIVE COVENANTS, RESTRICTIONS AND
LIMITATIONS OF ARLINGTON PARK, SECTION II,
A SUBDIVISION IN ALLEN COUNTY, INDIANA

Arlington Investment Corp., an Indiana corporation, by Theodore L. Brehm, its President, and Herbert R. Bergwall, its Secretary, as the Developer of Arlington Park, Section II, a subdivision of Allen County, Indiana, according to the plat thereof recorded on July 10, 1972, in Plat Record Book 34, page 39, in the Office of the Recorder of Allen County, Indiana, does hereby amend the Protective Covenants, Restrictions and Limitations appended to the plat of Arlington Park, Section II, in the following particulars:

1. Paragraph 18 shall be amended in its entirety to read as follows:

18. Assessments. Developer, for each lot and/or living unit owned by it within the Addition, hereby covenants, and each owner of any lot or living unit, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or conveyance, shall be deemed to covenant and agree to pay to the Arlington Park Association the Maintenance Fund and/or Club Operating Fund assessments and charges, as hereinafter provided.

118.

a. Maintenance Fund. The "Maintenance Fund" assessment shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of residents of the Addition and in particular, for the improvement and maintenance of the greenways, sidewalks, playgrounds and all other Common Areas, including but not limited to, repair, maintenance, the cost of labor, equipment and materials, supervision, security, lighting, lawn care, snow removal, insurance, taxes, and all other things necessary or desirable in the opinion of the Members of the Association in connection therewith.

The Maintenance Fund Assessment as herein provided shall commence to accrue and become a lien upon any said lots or living units as soon as title thereto has been divested from Developer, or when a dwelling or living unit shall be erected thereon, whichever shall first occur, and shall be payable on the first day of January of each year thereafter. All assessments shall be determined by and paid to the Association, and the Association shall be responsible for carrying out the purposes of such assessments.

The amount of said Maintenance Fund assessment is established as follows:

(i) The annual assessment for the calendar year starting January 1, 1973, shall be Twenty-Four Dollars (\$24.00) per assessable membership.

(ii) For each year thereafter, commencing with the year beginning January 1, 1974, the Board of Directors of the Association shall establish a budget for such calendar year and shall

determine the annual membership assessment required to meet said budget. Such budget and assessment for each such calendar year shall be established by the Board of Directors at a meeting to be held not later than October 31st of each preceding calendar year. The Board of Directors shall then mail to all Association members a copy of said budget and notice of the ensuing year's assessment not later than November 15th of the year prior to the year to which the assessment is applicable.

(iii) The amount of the assessment set by the Board of Directors for any such calendar year may be changed by the member of the Association at a meeting duly called for that purpose as hereinafter provided. The President or Secretary of the Association shall call a meeting of the membership of the Association, to be held prior to December 31st of the year prior to the year to which the assessment is applicable, upon receipt, prior to November 30th, of a written petition for assessment review bearing the signatures of at least twenty (20%) percent of the memberships of the Association. The President or Secretary of the Association shall give at least fifteen (15) days written notice of such meeting to all members.

(iv) Any change so adopted in the amount of the assessment set by the Board of Directors must have the assent of two-thirds (2/3) of the memberships of the Association who are voting in person or by proxy at a meeting duly called for such purpose. At any such meeting, a quorum of not less than fifty (50%) percent of all memberships shall be required.

b. Club Operating Fund. The Developer plans to construct a clubhouse within Arlington Park, which clubhouse will contain and provide various social, recreational and other facilities. At such time as construction on said clubhouse is substantially completed, the Club Operating Fund will commence to accrue and will become a lien upon all lots or living units in Arlington Park, except as hereinafter provided. For any lots that a living unit has not been erected thereon at the time of substantial completion of the clubhouse, such assessment will commence to accrue and become a lien at such time as a living unit has been erected on such lot. Said Club Operating Fund assessment shall be payable on the first day of January of each year thereafter. All assessments shall be determined by and paid to the Association and the Association shall be Responsible for carrying out the purposes of such assessments.

The amount of said Club Operating Fund Assessment is established as follows:

(1) Commencing with the year beginning January 1, 1974, the Board of Directors of the Association shall establish a budget for such calendar year and shall determine therefrom the annual membership assessment required to meet said budget. Such budget and assessment for each calendar year shall be established by the Board of Directors at a meeting to be held not later than October 31st of each preceding calendar year. The Board of Directors shall mail to all Association members a copy of said budget and notice of the ensuing year's assessment not later than November 15th of the year prior to the year to which the assessment is applicable.

(ii) The amount of the assessment set by the Board of Directors for any such calendar year may be changed by the members of the Association at a meeting duly called for that purpose as hereinafter provided. The President or Secretary of the Association shall call such meeting of the membership, to be held prior to December 31st of the year prior to the year to which the assessment is applicable, upon receipt, prior to November 30th, of a written petition for assessment review bearing the signatures of at least twenty (20%) percent of the memberships

of the Association. The President or Secretary of the Association shall give at least fifteen (15) days written notice of such meeting to all members.

(iii) Any change so adopted in the amount of the assessment set by the Board of Directors must have the assent of two-thirds (2/3) of the memberships of the Association who are voting in person or by proxy at a meeting duly called for such purpose. At any such meeting, a quorum of not less than fifty (50%) percent of all memberships shall be required.

(iv) Said Club Operating Fund shall be used exclusively for the purpose of operating and maintaining said clubhouse and all recreational facilities therein or used in connection therewith, including but not limited to, repair, maintenance, cost of labor, equipment, supervision, taxes, insurance, and all other things necessary or desirable in the opinion of the Members of the Association in connection therewith.

c. Collection. Such Maintenance Fund and Club Operating Fund assessments, together with interest thereon and costs of collection as hereafter provided, shall be a lien upon property against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection, shall also be the personal obligation of the person or persons who was the owner of such property at the time when the assessment fell due. The obligation of the assessment is upon the owner of the property or the living unit and is not transferred, even though the owner may have transferred the membership and voting rights in Arlington Park Association, as hereinbefore provided. If the assessments are not paid on the due date, then such assessments shall be a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns. However, the personal obligation of the then owner to pay such assessment shall remain a personal obligation and shall not pass to his successors in title unless expressly assumed by them. If the assessment is not paid within sixty (60) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action against the owner personally obligated to pay the same, or foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing such action. The lien of the assessments as provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the property, taxes and assessments for public improvements.

2. Paragraph 21 shall be added to read as follows:

21. Waiver. The failure of either the Developer or an Owner to enforce any covenant contained herein or right arising from any covenant contained herein shall in no case be deemed a waiver of that right or covenant.

3. All other terms and provisions of said Protective Covenants, Restrictions and Limitations shall remain in full force and effect.

In Witness Whereof, Arlington Investment Corp. has hereunto set its hand and seal this 13th day of March, 1973.

ARLINGTON INVESTMENT CORP.

ATTEST:

By: Herbert R. Bergwall.
Its Secretary

By: Theodore L. Brehm.
Its President.

State of Indiana

County of Allen, SS:

Before me, the undersigned, a Notary Public in and for said County and State, this 13th day of March, 1973, personally appeared Theodore L. Brehm and Herbert R. Bergwall, to me known, and know by me to be the persons, who as President and Secretary respectively of Arlington Investment Corp., the corporation which executed the foregoing instrument, signed the same and acknowledged to me that they did so sign the same in the name and on behalf of said corporation as such officers, respectively; that the same is their free act and deed as such officers, respectively, and the free and corporate act and deed of said corporation; and that they were duly authorized thereunto by the Board of Directors of said Corporation.

In Witness Whereof, I have hereunto set my hand and seal the date above written.

(Notary Seal)

Jacqueline L. Stoy,
Notary Public.

Confirmed by the Allen County Plan Commission on this 10 day of April, 1973.

Jack Suter,
Zoning Administrator

Approved by the Board of Public Works this 18th day of April, 1973.

(Corporate Seal)

Jerry D. Boswell

Ronald L. Bonar.

APPROVAL: ARLINGTON PARK SECTION II

ALLEN COUNTY PLAN COMMISSION
approved April 18, 1973

ALLEN COUNTY SURVEYOR
approved April 18, 1973.

M. V. Sowers.

William L. Sweet.
Approved For Drainage Only.

Ezra Shanebeck

ALLEN COUNTY BOARD OF COMMISSIONERS
approved April 18, 1973.

Charles N. Hoemig.

Richard W. Ellenwood.

BOARD OF PUBLIC WORKS,
FORT WAYNE, INDIANA
approved April 18, 1973.

Jerry D. Boswell

Ronald L. Bonar.

Prepared by Maclyn T. Parker.

Recorded May 10, 1973.

Document No. 73-11022.
Microfilm File Recorder's Office.