

DECLARATION OF COVENANTS, EASEMENTS  
CONDITIONS AND RESTRICTIONS

FOR

ARBOR GROVE

THIS DECLARATION OF COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made as of the \_\_\_\_ day of August, 2000, by BAY COMMUNITIES, LLC, an Indiana Limited Liability Company ("Developer").

1. WHEREAS, Declarant is the owner of certain real estate in Hamilton County, State of Indiana, more particularly described in Exhibit "A", attached hereto and, by this reference, made a part hereof (hereinafter referred to as the "Real Estate"); and

2. WHEREAS, Declarant desires and intends to create on the Real Estate a residential community to be known as Arbor Grove (the "Development") and to sell and convey the residential lots situated within the platted areas of the Development, and before doing so, desires to subject to and impose upon all real estate within the platted areas of the Development mutual and beneficial restrictions, covenants, conditions, easements, assessments, privileges, liens and charges (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit and complement of the lots and lands and each Owner of all or part thereof in the Development and future home Owners thereof as hereinafter provided in this Declaration;

3. WHEREAS, Declarant desires that this Declaration of Covenants, Easements, Conditions and Restrictions also apply to certain real estate that may be acquired and added to the Arbor Grove subdivision at some future date; and

4. WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which shall be delegated and assigned the power and duty to (i) administer any Common Properties located on the Real Estate, (ii) provide for the mowing of lawns in the Common Properties and the maintenance of any pool, facilities and landscaping and other common amenities within said Common Properties, (iii) enforce the covenants and restrictions contained in this Declaration, (iv) collect and disburse the assessments and charges imposed and created hereby and hereunder, and (v) promote health, safety and welfare of the Owners of the Real Estate, and all parts thereof; and

5. WHEREAS, Declarant has caused or will cause to be incorporated under the laws of the State of Indiana a not-for-profit corporation under the name of Arbor Grove Home Owners Association, Inc., or similar name, as such agency for the purpose of exercising such functions.

6. NOW, THEREFORE, Declarant hereby declares that the Real Estate is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to the provisions, agreements, conditions, covenants, restrictions, easements, assessments, charges and liens hereinafter set forth, all of which are declared to be in furtherance of a plan for preservation and enhancement of the Real Estate, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Real Estate as a whole, common areas, and each of the Lots situated therein. All of the Restrictions shall run with the Land and shall be binding upon the Declarant and upon the Owners and any other Persons having or acquiring any right, title or interest, legal or equitable, in and to the Real Estate or the Development or any part thereof subject to this Declaration and/or the Restrictions, and shall inure to the benefit of the Declarant and every one of the Declarant's successors in title to any Real Estate.

## **I. DEFINITIONS**

- A. "Act" - shall mean and refer to the Indiana Nonprofit Corporation Act of 1991, as amended, or any successor act.
- B. "Annual Assessment" - amount to be paid to the Association by each owner annually.
- C. "Articles" - shall mean and refer to the Articles of Incorporation of the incorporated Association, as the same may be amended from time to time.
- D. "Assessments" - collectively referring to Annual Assessments, Lot Assessments and Special Assessments.
- E. "Association" - Arbor Grove Home Owners Association, Inc., an Indiana non-profit corporation, its successors and assigns.
- F. "Association Documents" - the articles of incorporation, by-laws, code of regulations and any and all procedures, rules, regulations or policies adopted by the Association or a Committee charged with such regulation by this Declaration.
- G. "Board" - the board of trustees or directors of the Association.
- H. "By-Laws" - shall mean and refer to the Code of By-Laws of the incorporated Association, as the same may be amended from time to time.
- I. "Common Expenses" - expenses incurred in administration, upkeep and maintaining the Common Property including but not limited to the payment of property taxes and other assessments.

- J. “Common Property” - all real and personal property now or hereafter acquired, pursuant to this Declaration or otherwise, and owned by the Association for the common use and the enjoyment of the Owners as well as all other portions of the Real Estate shown on any recorded subdivision plat of the Real Estate which are not Lots (or blocks which are to be divided in Lots).
- K. “Developer” - Bay Communities, LLC and any manager, member of the LLC, successor or assign thereof to which Developer specifically assigns any of its rights under this Declaration by a written instrument.
- L. “Improvements” - all buildings and garages; overhead, aboveground and underground installations, including without limitation, utility facilities and systems, lines, pipes, wires, towers, cables, conduits, poles, antennae and satellite dishes; flagpoles; swimming pools and tennis courts; slope and drainage alterations; roads, driveways, uncovered parking areas and other paved areas; fences, trellises, walls, retaining walls, exterior stairs, decks, patios and porches; planted trees, hedges, shrubs and other forms of landscaping; and all other structures of every type.
- M. “Lot” - a discrete parcel of real property identified upon the recorded subdivision plat of the Property, or recorded re-subdivision thereof and any other discrete parcel of real property designated by Developer, excluding the Common Property and any portion of the Property dedicated for public use.
- N. “Lot Assessment” - an assessment that the Board may levy against one or more Lots to reimburse the Association for costs incurred on behalf of those Lot(s), including without limitation, costs associated with making repairs that are the responsibility of the Owner of those Lots; costs of additional insurance premiums specifically allocable to an Owner; costs of any utility expenses chargeable to an Owner but not separately billed by the utility company; and all other charges reasonably determined to be a Lot Assessment by the Board.
- O. “Manager” - the person or entity retained by the Board to assist in the management of the Association as set forth in Article IV, Paragraph F.
- P. “Member” - any person or entity entitled to membership in the Association, as provided for in Article III.
- Q. “Owner” - the record owner, whether one or more persons or entities, of fee simple title to a Lot, including contract sellers, but excluding those having an interest merely as security for performance of an obligation and also excluding the Developer.

- R. "Person" - shall mean and refer to an individual, firm, corporation, partnership, association, trust, or other legal entity, or any combination thereof.
- S. "Plat" - shall mean and refer to the subdivision plat or plats of the Real Estate recorded in the Office of the Recorder of Hamilton County, Indiana, as the same may be hereafter amended or supplemented.
- T. "Private Driveway Easements" - shall mean the streets other than public streets as shown on any recorded subdivision plat of the Real Estate whether such plat is heretofore or hereafter recorded.
- U. "Property" - all of the real property described in Exhibit A attached hereto and such additional property as may be annexed by amendment to this Declaration, or that is owned in fee simple by the Association, together with all easements and appurtenances.
- V. "Reserve Fund" - the fund established pursuant to Article V.
- W. "Restrictions" - shall mean and refer to the agreements, covenants, conditions, restrictions, easements, assessments, charges, liens and all other provisions set forth in this Declaration, as the same may be amended from time to time.
- X. "Rules" - the rules and regulations governing use of the Property and the Common Property, as may be established by the Board from time to time pursuant to Article IV.
- Y. "Special Assessment" - an assessment levied by the Association against all Lots pursuant to Article V or at a special meeting of the Members of the Association to pay for capital expenditures or interest expense on indebtedness incurred for the purpose of making capital expenditures and not projected to be paid out of the Reserve Fund.
- Z. "State" - the State of Indiana.
- AA. "Turnover Date" - the date described in Article V, Paragraph C.
- BB. "Zoning Commitments" - shall mean and refer to the written commitments, as amended, heretofore entered in connection with zoning of the Real Estate, which commitments are contained in the development statement approved in Zoning Ordinance 33-9-99, and are on file in the Planning Department of the City of Noblesville, such commitments being incorporated herein by reference, as the same may hereafter be amended in accordance with their terms.

## II. GOALS

The covenants, easements, conditions and restrictions contained in this Declaration are declared to be in furtherance of the following purposes:

- A. Compliance with all zoning and similar governmental regulations;
- B. Promotion of the health, safety and welfare of all Owners and residents of the Property;
- C. Preservation and enhancement of value, beautification and maintenance of the Property and all Improvements; and
- D. Establishment of requirements for the development and use of the Property.

## III. MEMBERSHIP AND VOTING RIGHTS

- A. Membership. Every Owner shall be a member of the Association. For purposes of determining classes of membership, a Class A member shall be the owner of any conveyed lot containing a home thereon, and a Class B member shall be the owner of any undeveloped platted lot; and each reference to a lot in this Declaration shall be deemed to be a conveyed lot, containing a home or an unconveyed, platted or unplatted, lot, respectively, as more particularly set forth as follows. The Association shall have two (2) classes of membership:
  - 1. Class A. Every person, group of persons or entity, other than the Declarant, who is a record owner of a fee interest in any improved lot shall, by this Declaration, be subject to assessment by the Association and shall be classified as a Class A member, provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a member. A Class A membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. Class A members shall be entitled to one (1) vote for each lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record owner of a fee interest in any lot, then the vote for the membership appurtenant to such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot. In the event agreement is not reached, the vote attributable to such lot shall not be cast.

2. Class B. The Class B member shall be the Declarant , which shall be entitled to three (3) votes for each platted Lot owned. For purposes of determining voting rights and duties, it shall be assumed there is a total of 214 platted and unplatted lots within the Development and Declarant shall have the automatic right to plat and record a residential development plat, not to contain in excess of 214 Lots, without the consent or approval of the Association or any other person, firm or corporation. The Class B membership shall cease and be converted to a Class A membership upon the earlier of the following: (1) 90% of homes on lots are deeded to Owners; or (2) January 1, 2005. In the event all the lots have not been conveyed to owners or the Class B memberships have not been surrendered by the then holders thereof for cancellation on the books of the Association, Class B memberships existing, if any, at time of cancellation, shall automatically become Class A memberships excepting such Class A memberships shall not be subject to assessment or the lien of assessment until a home is constructed thereon.

B. Governance. Voting and all other matters regarding the governance and operation of the Association shall be set forth in this Declaration and/or the Association Documents.

#### **IV. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

A. Common Property. Developer may, from time to time, at Developer's option, convey to the Association for the use and benefit of the Association and the Members real or personal property, or any interest therein, as part of the Common Property in the nature of an easement appurtenant to the Property. The Association shall accept title to any interest in any real or personal property transferred to it by Developer. The Association, subject to the rights of the Owners set forth in this Declaration and the Association Documents, shall be responsible for the exclusive management and control of the Common Property, if any, and all Improvements thereon, and shall keep it in good, clean, attractive, safe and sanitary condition, order, and repair, in accordance with the terms and conditions of this Declaration.

B. Personal Property and Real Property for Common Use. The Association may acquire, hold, mortgage and dispose of tangible and intangible personal property and real property in addition to that property conveyed to it by Developer.

- C. Cost-Sharing Agreements. The Association may enter into cost-sharing agreements with other home owners associations pursuant to which the Association agrees to share in the cost of maintaining, repairing and replacing entranceway features, signs, landscaping, storm water retention facilities, mounding, fencing, lake and lake access easements and facilities, and any other Improvements that benefit the Property.
- D. Rules and Regulations. The Association may make and enforce reasonable rules and regulations governing the use of the Property, which may be in addition to and shall not be inconsistent with this Declaration and the Association Documents. The Association shall have the power to impose sanctions on Owners, including without limitation: (i) reasonable monetary fines which shall be considered Lot Assessments, (ii) suspension of the right to vote as a Member of the Association, and (iii) suspension of the right to use the Common Property. In addition, the Board shall have the power to seek relief in any court for violations or to abate unreasonable disturbances. If the Board expends funds for attorneys' fees or litigation expenses in connection with enforcing this Declaration, the Association Documents or the Rules against any Owner, tenant guest or invitee of any Owner, the amount shall be due and payable by such Owner and shall be a Lot Assessment against such Owner's Lot. Owners shall be bound by all such Rules and Regulations promulgated by the Association the same as if specifically included herein and recorded herewith.
- E. Implied Rights. The Association may exercise any other right or privilege given to it expressly by the laws of the State and this Declaration, and every other right or privilege reasonably implied from the existence of any right or privilege granted in this Declaration, or reasonably necessary to effect any such right or privilege.
- F. Managing Agent. The Board may retain and employ on behalf of the Association a Manager, which may be Developer, and may delegate to the Manager such duties as the Board might otherwise be authorized or obligated to perform. The compensation of the Manager shall be a Common Expense. The Term of any management agreement shall not exceed three years and shall allow for termination by either party, without cause, and without penalty, upon no more than 90 days' prior written notice.
- G. Insurance.
1. The Association shall be required to obtain and maintain adequate blanket property/casualty insurance, comprehensive public liability insurance and flood insurance covering all of the Common Property in an amount as is required by law or commonly required

by prudent institutional mortgage investors. The public liability coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Properties and shall insure the Association, the Board of Directors, or any committee of the Association or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may act as agents or employees of any of the foregoing with respect to the Real Estate or the Development. Such public liability insurance policy shall contain a “severability of interest” clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

2. The Association may, in the Board’s discretion, obtain and maintain the following insurance: (a) fidelity bond coverage and workers’ compensation insurance for all officers, directors, board members and employees of the Association and all other persons handling or responsible for handling funds of the Association, (b) adequate comprehensive general liability insurance, (c) officers’ and trustees’ liability insurance to fund the obligations of the Association under Section X. D., (d) additional insurance against such other hazards and casualties as is required by law, and (e) any other insurance the Association deems necessary.
3. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses.
4. In the event of damage or destruction of any portion of the Common Property, the Association shall promptly repair or replace the same, to the extent that insurance proceeds are available. Each Owner hereby appoints the Association as its attorney-in-fact for such purpose. If such proceeds are insufficient to cover the cost of the repair or replacement, then the Association may levy a Special Assessment pursuant to Section V to cover the additional costs.

H. Condemnation. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Property, or any portion thereof. Each Owner hereby appoints the Association as its attorney-in-fact for such purpose. The awards or proceeds of any condemnation action shall be payable to the Association, to be held in trust for the benefit of the Owners.

- I. Books, Records. Upon reasonable request of any Member, the Association shall be required to make available for inspection all books, records and financial statements of the Association.

## V. ASSESSMENTS

- A. Reserve Fund. The Board may establish a Reserve Fund for financing the operation of the Association, for paying necessary costs and expenses of operating the Association and repairing and maintaining the Common Property.
- B. Types of Assessments. The Developer, for each Lot owned, covenants and agrees, and each Owner, by accepting a deed to a Lot, is deemed to covenant and agree, to pay to the Association the following assessments: (i) Annual Assessments; (ii) Special Assessments; and (iii) Lot Assessments. No Owner may gain exemption from liability for any Assessment by waiving or foregoing the use or enjoyment of any of the Common Property or by abandoning his/her Lot. Annual and Special Assessments shall be fixed at a uniform rate for all Lots.
- C. Annual Assessments. Annually, on or before the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year and shall make available a copy of such proposed budget to each Owner prior to or with the notice to Owners of such annual meeting. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the assessments herein provided, whenever determined. The Board shall annually estimate the Common Expenses and the expenses, if any, it expects the Association to incur in the Association's next ensuing fiscal year for the maintenance, operation and management of the Association (which may also include amounts, if any, for the Reserve Fund – as may be determined by the Board) and shall assess each Owner of a Lot an Annual Assessment equal to such estimated expenses divided by the total number of Lots. Each Owner shall be given written notice of such assessment against Lot and the Annual Assessments shall be paid in accordance with the procedures set forth in the Rules. Notwithstanding the foregoing to the contrary (i) prior to January 1, 2005 in no event shall the Annual Assessments for each Lot exceed \$240.00; and (ii) prior to the date that Developer relinquishes its right to appoint members of the Board as set forth in Article III, Paragraph A herein (the "Turnover Date"), Developer shall not pay the Annual Assessments applicable to Lots owned by Developer, but shall pay any deficit incurred in operating the Association.

- D. Special Assessments. From time to time, Common Expenses of an unusual, extraordinary or capital nature not included in the budget or not otherwise anticipated may arise. At such time, unless otherwise provided in the Declaration, the Articles, the By-Laws or the Act, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot and Dwelling Unit, prorated in equal shares. The Board may levy against any Lot(s) a Special Assessment to pay for capital expenditures or interest expense on indebtedness incurred for the purpose of making capital expenditures and not projected to be paid out of the Reserve Fund; provided that any such assessment shall have the assent of two-thirds (2/3) of Members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting called for the purpose of levying a Special Assessment shall be sent to all Members not less than 30 days nor more than 60 days in advance of the meeting. A quorum must be present at any such meeting. Without limiting the generality of the foregoing, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repairs or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.
- E. Lot Assessments. The Board may levy a Lot Assessment against any Lot(s) and the Owner(s) thereof to reimburse the Association for costs incurred on behalf of the Lot(s), including without limitation, costs associated with making repairs that are the responsibility of the Owner; costs of additional insurance premiums specifically allocable to an Owner; costs of any utility expenses chargeable to an Owner but not separately billed by the utility company; and all other fines and charges reasonably determined to be a Lot Assessment by the Board. Upon its determination to levy a Lot Assessment, the Board shall give the affected Owner(s) written notice and the right to be heard by the Board or a duly appointed committee thereof in connection with such Lot Assessment, 10 days prior to the effective date of the levy of any Lot Assessment. The Board may levy a Lot Assessment in the nature of a fine reasonably determined by the Board against the Lot of any Owner who violates the Rules, the Association Documents or any provision of this Declaration, or who suffers or permits his/her family members, guests, invitees or tenants to violate such Rules, the Association Documents, or provision of this Declaration.
- F. Remedies.
1. In General. The Association or any party to whose benefit these Restrictions inure, including the Developer, may proceed at law or in equity to prevent the occurrence or continuation of any violation

of these Restrictions, but neither the Developer nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions.

2. Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert), or any other party, to any right available to him upon the occurrence, reoccurrence or continuation of such violation or violations of these Restrictions.
3. Late Charge; Acceleration. If any Assessment remains unpaid for 10 days after all or any part thereof shall become due and payable, the Board may charge interest at the lesser of the rate of 12% per annum or the highest rate permitted by law, together with an administrative collection charge of \$25.00.
4. Liability for Unpaid Assessments. Each Assessment or installment of an Assessment, together with interest thereon and any costs of collection, including reasonable attorneys' fees shall become the personal obligation of the Owner(s) beginning on the date the Assessment or installment thereof becomes due and payable. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The Board may authorize the Association to institute an action at law on behalf of the Association against the Owner(s) personally obligated to pay any delinquent assessment. An Owner's personal obligation for a Lot's delinquent Assessments shall also be the personal obligation of his/her successors in title who acquire an interest after any Assessment becomes due and payable and both such Owner and his/her successor in title shall be jointly and severally liable therefor. Except as otherwise provided herein, the transfer of an interest in a Lot shall neither impair the Association's lien against that Lot for any delinquent Assessment nor prohibit the Association from foreclosing that lien.
5. Liens. All unpaid Assessments, together with any interest and charges thereon or costs of collection, shall constitute a continuing charge in favor of the Association and a lien on the Lot against which the Assessment was levied. If any Assessment remains unpaid for 10 days after it is due, then the Board may authorize any officer or appointed agent of the Association to file, record and foreclose upon a certificate of lien (or similar document) for all or any part of the unpaid balance of that Assessment, together with interest and costs, with the appropriate governmental office

containing a description of the Lot which the lien encumbers, the name(s) of the Owner(s) of that Lot, the amount of the unpaid portion of the Assessment, and such other information as the laws of the State may require. The certificate may be signed by any officer, authorized agent or Manager of the Association. Upon the recording of the certificate, the subject Lot shall be encumbered by a continuing lien in favor of the Association. The Assessment lien shall remain valid for a period of five years from the date such certificate is duly filed, unless the lien is released earlier or satisfied in the same manner provided by the law of the State for the release and satisfaction of mortgages on real property, or unless the lien is the subject of pending litigation or is discharged by the final judgment or order of any court having jurisdiction. Notwithstanding the foregoing, the lien for Assessments provided for in the Section shall be subordinate to the lien of any bona fide first mortgage on a Lot.

6. Vote on Association Matters; Use of Common Property. If any Assessment remains unpaid for 30 days after it becomes due, then the delinquent Owner's voting rights upon Association matters and the Owner's privileges to use the Common Property, except for necessary ingress and egress to his/her Lot, shall be suspended until such Assessment is paid.

## **VI. MAINTENANCE**

- A. Maintenance by Association. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement of all landscaping and other flora, structures, and Improvements situated upon the Common Property and all personal property used in connection with the operation of the Common Property.
- B. Maintenance by Owner. Each Owner or occupant shall repair, replace, and maintain in good order and condition, at his/her expense, portions of, improvements to, structures on, and equipment and components used in connection with, his/her Lot. This maintenance responsibility includes, without limitation, promptly furnishing all necessary materials and performing or causing to be performed at his/her own expense all maintenance, repairs and replacements within such Lot that, if omitted, would adversely affect the safety and usefulness of the Common Property. Each Owner shall maintain those portions of his/her Lot abutting other Owner's Lots or that are adjacent to any portion of the Common Property

in accordance with the Rules and the requirements set forth in this Declaration.

- C. Right of Association to Repair Lot. If any Owner fails to maintain his/her Lot in the manner required herein, and if the Board determines that any maintenance of that Lot is necessary to ensure public safety, to protect interests/welfare/rights of other Owners and/or the Association, to permit reasonable use or enjoyment of the Common Property by Owners, to prevent damage to or destruction of any other part of the Common Property or to comply with the Rules or the terms of this Declaration, then the Board shall have the right, but not the obligation, to authorize its employees or agents to enter the Lot at any reasonable time to complete the necessary maintenance and the Board may levy a Lot Assessment for all reasonable expenses incurred. Neither the Association nor any of its Board, agents, employees, or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.
  
- D. Damage to Common Property By Owner or Occupant. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents, invitees or lessees. If the Common Property is damaged by any Owner or occupant, his/her family, guests, or invitees, then the Board may levy a Lot Assessment against such Owner for the cost of repairing or replacing the damaged property. The Association shall be entitled to enter a Lot to repair or maintain any Common Property adjacent to such Lot.

## **VII. ARCHITECTURAL STANDARDS**

All Property at any time subject to this Declaration shall be governed and controlled by this Article.

- A. Design Review Board. The Design Review Board shall be a board consisting of three (3) persons. Until the Turnover Date, Developer shall have the sole and exclusive right to appoint and remove all three members of the Design Review Board at will. After the Turnover Date, the Board shall have the right to appoint all three members to the Design Review Board at will. The Design Review Board shall have the exclusive authority, by action of two or more of the members thereof, at a private or public meeting to determine the architectural standards which shall govern the construction of Improvements on the Property. Notwithstanding the foregoing, or any language to the contrary contained anywhere within this Declaration the Design Review Board shall have no authority with respect to the original home design and construction on any Lot. The Declarant shall at all times retain exclusive authority for approving and regulating

the original design and construction of the initial residence erected on any Lot. Except as otherwise reserved to the Declarant, the Committee shall regulate the external design, appearance, use, location and maintenance of lands and Improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. Each Owner covenants and agrees by acceptance of a deed to a Lot, to comply with, and to cause his/her Lot and any occupant thereof to comply with the guidelines and standards promulgated by the Design Review Board. No Improvement shall be placed, erected or installed on the Property, no construction (which term shall include in its definition staking, clearing, excavation, grading and other site work) and no fences or removal of decorative fencing, plantings or removal of plants, trees or shrubs shall be permitted without, until and unless the Owner first obtains the written approval thereof of the Design Review Board and otherwise complies with the provisions of this Declaration.

- B. Construction and Modifications. Except as otherwise provided in this Declaration, the Design Review Board shall have jurisdiction over all construction, modifications, additions or alterations of Improvements on or to the Property. (As set forth above, exclusive authority with respect to the design and construction of the original residence on each Lot is reserved to the Declarant.) No person shall construct any Improvement on any Lot, including without limitation, alter surfaces of existing Improvements, change paint colors or roofing materials, construct or modify fencing, or install any recreational device, without the prior written consent of the Design Review Board. Owners shall submit plans and specifications in the manner and form prescribed from time to time by the Design Review Board, showing the nature, kind, shape, color, size, materials and location of Improvements and alterations to the Design Review Board for its approval. Nothing contained herein shall be construed to limit the right of an Owner to remodel or decorate the interior of his/her residence.
- C. Variances. To avoid unnecessary hardship and/or to overcome practical difficulties in the application of the provisions of this Declaration, the Design Review Board shall have the authority to grant reasonable variances from the provisions of Article VIII, provided that the activity or condition is not prohibited by applicable law; and provided further that, in their judgment, the variance is in the best interest of the community and is within the spirit of the standards of the Design Review Board. No variance granted pursuant to this Section shall constitute a waiver of any provision of this Declaration as applied to any other person or any other part of the Property.

- D. Duties of Design Review Board. The Design Review Board shall endeavor to approve or disapprove proposed Improvements within thirty (30) days after all required information shall have been submitted to it. However, failure of the Design Review Board to issue a decision within thirty (30) days shall not constitute approval until and unless Owner submits a written request for decision to the Design Review Board and after receiving such request, the Design Review Board's failure to issue a decision continues for thirty (30) additional days.
- E. Liability of Design Review Board. Neither the Design Review Board nor any agent thereof, nor the Developer, shall be responsible in any way for any defects in any plans, specification or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Design Review Board does not make any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.
- F. Inspection. The Committee may inspect work being performed with its permission to assure compliance with these Restrictions, the submitted plans and applicable regulations.
- G. Improvements by Developer. Notwithstanding any language contained herein to the contrary, all Improvements and landscaping constructed by the Developer or its members, partners or shareholders, shall be deemed to comply in all respects with the requirements of the Design Review Board.

## VIII. USE RESTRICTIONS

The following restrictions and covenants concerning the use and occupancy of the Property shall run with the land and be binding upon the Developer and every Owner or occupant, their heirs, successors and assigns, as well as their family members, guests, and invitees. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof including reasonable attorney fees and costs, but there shall be no right of reversion or forfeiture resulting from such violation.

- A. Use of Lots.
  - 1. Single Family Residential Usage. Except as otherwise permitted herein, each Lot shall be occupied and used exclusively for single-family, residential purposes and purposes customarily incidental to a residence.

2. Diligence in Construction. Every building whose construction or placement on any residential Lot in the Development is begun shall be completed within nine (9) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.
3. Accessory Outbuildings. Accessory buildings, mini barns, storage sheds or other outbuildings shall not exceed a maximum size of 150 square feet, shall utilize a shingled roof to match the roof of the residence, shall be painted or stained to match the residence, and the exterior shall not be constructed of metal, tin, aluminum or the like. All such structures shall be approved by the Design Review Board prior to the initiation of any construction.
4. Rights-of-Way. No portable basketball goals, soccer goals, or other structures may be placed in the right-of-way of a street. The only improvements that may be placed within a right-of-way are mailbox or newspaper box posts, street lights, post lights, and decorative landscaping, each of which must first be approved by the Design Review Board.
5. Fifty Foot Buffer Strip. In accordance with the local zoning ordinance, a fifty foot green space buffer strip has been established around the entire perimeter of the subdivision. Within the fifty foot green space buffer strip, there shall be no manmade improvement of any kind, including but not necessarily limited to homes, garages, storage sheds, mini-barns, fences, playground equipment or any other man-made structures or equipment. The only permitted improvements within the fifty foot green space buffer strip shall be landscaping and/or trail materials. This clause shall have no application to any entryway monumentation as erected by Declarant or thereafter maintained or reconstructed by the Association.
6. Occupancy or Residential Use of Partially Completed Dwelling House Prohibited. No dwelling house constructed on any of the residential lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The Committee shall make the determination of whether the house shall have been substantially completed and such decision shall be binding on all parties.
7. Other Restrictions. All tracts of ground in the Development shall be subject to the easements, restrictions and limitations of record

appearing on the recorded plat of the subdivision, on recorded easements, rights-of-ways, and also to all governmental zoning authority and regulation affecting the Development, all of which are incorporated herein by reference.

- B. Use of Common Property. The Common Property may be used only in accordance with the purposes for which they are intended and for any reasonable purposes incidental to the residential use of a Lot. All uses of the Common Property shall benefit or promote the health, safety, welfare, convenience, comfort, recreation, and enjoyment of the Owners and occupants, and shall comply with the provisions of this Declaration, the laws of the State, and the Rules.
- C. Noxious, Offensive, or Hazardous Actions or Materials. No noxious or offensive activities shall be carried on on any lot in the Development, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to an owner of another lot in the Development. Nothing shall be done or kept in any Lot or in or on any portion of the Common Property that is unlawful or hazardous, that might reasonably be expected to increase the cost of casualty or public liability insurance covering the Common Property or that might unreasonably disturb the quiet occupancy of any person residing on any other Lot. This paragraph shall not be construed so as to prohibit the Developer from construction activities consistent with its residential construction practices.
- D. Signs. No signs or advertisements of any character shall be erected, posted or displayed upon the Property, except: (i) marketing signs installed by the Developer while marketing the Lots and residences for sale; (ii) street and identification signs installed by the Association or the Developer; and (iii) one temporary real estate sign not to exceed six square feet in area advertising that such Lot is for sale.
- E. Animals. No person may keep, breed, board or raise any animal, livestock, reptile, or poultry of any kind for breeding or other commercial purpose on any Lot, or in or upon any part of the Common Property, unless expressly permitted by the Rules. Owners may have usual household pets and such pets shall be kept reasonably confined so as not to become a nuisance.
- F. Nuisances. No noxious or offensive trade shall be permitted on the Property or within any dwelling located on the Property.
- G. Business. No industry, business, trade, occupation or profession of any kind may be conducted, operated or established on the Property, without the prior written approval of the Board.

- H. Storage. No open storage of any kind is permitted.
- I. Hotel/Transient Uses; Leases. No Lot may be used for hotel or transient uses, including without limitation, uses in which the occupant is provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen, or similar services, or leases to roomers or boarders. All leases shall be in writing and shall be subject to this Declaration.
- J. Vehicles. The Board shall be entitled to create and enforce reasonable rules concerning the parking of any vehicle permitted in the Common Property. In addition to its authority to levy Lot Assessments as penalties for the violation of such rules, the Board shall be authorized to cause the removal of any vehicle violating such rules. No trucks, commercial vehicles, boats, trailers, vans, campers or mobile homes shall be parked or stored on the street or on any Lot (except in an enclosed structure shielded from view) for any time period longer than forty-eight (48) hours in any thirty (30) day period, provided, however, that nothing contained herein shall prohibit the reasonable use of such vehicles as may be necessary during construction of residences on the Lots.

The word “trailer” shall include trailer coach, house trailer, mobile home, automobile trailer, camp car, camper or any other vehicle, whether or not self-propelled, constructed or existing in such a manner as would permit use and occupancy thereof, or for storage or the conveyance of machinery, tools or equipment, whether resting on wheels, jacks, tires or other foundation. The word “truck” shall include and mean every type of motor vehicle other than passenger cars and other than any light pickup truck which is used as an automobile vehicle by an Owner or a member of an Owner’s family.

- K. Trash. Except for the reasonably necessary activities of the Developer during the original development of the Property, no burning or storage of trash, garbage or other refuse of any kind shall be permitted on the Property. All trash shall be deposited in covered, sanitary containers, screened from view. All houses built in the Association shall be equipped with a garbage disposal unit. Any receptacle for ashes, trash, rubbish or garbage shall be so placed and kept as not to be visible from any street within the Development at any time, except at the times when refuse collections are being made.
- L. Antennae. No outside television or radio aerial or antenna, or other aerial or antenna, including satellite receiving dishes, for reception or transmission, shall be maintained on the premises, to the extent permissible under applicable statutes and regulations, including those administered by the Federal Communications Commission, except that

this restriction shall not apply to satellite dishes with a diameter less than twenty-four inches (24”), erected or installed to minimize visibility from the street which the dwelling fronts.

- M. Utility Lines. All utility lines on the Property shall be underground, subject to the requirements of relevant governmental authorities and utility companies.
- N. Tanks. No tanks for the storage of propane gas or fuel oil shall be permitted to be located above or beneath the ground of any Lot except that propane gas grills are permitted.
- O. Street Tree. Developer may designate one (1) or more trees as deemed necessary by Developer along the street in front of each Lot. If Developer determines to designate street tree(s) then the Lot Owners agree to such uniform street trees. Each Lot Owner shall care fore, and, if necessary, replace such tree or trees at the Lot Owner’s expense with a like type of tree.
- P. Mailbox. Developer may designate a curb side mailbox for each Lot with a design in giving uniformity to the subdivision. If the mailbox is damaged, destroyed or deteriorates, then each Lot Owner, at such Lot Owner’s expense, shall repair or replace such mailbox with another of a like kind, design, pattern and color as the initial mailbox. No separate newspaper box shall be permitted other than those provided by the builder or developer.
- Q. Yard Lights and Lamp Posts. All yard lights and lamp posts shall conform to the standards set forth by the Design Review Board.
- R. Fencing. All fencing shall conform to the standards set forth by the Design Review Board.
- S. Swimming Pools. No above ground swimming pool shall be permitted upon any Lot except that this Article VIII, Paragraph S shall not be intended to prohibit the installation of a hot tub or sauna. (All hot tubs, saunas and other Improvements are subject to prior approval of the Design Review Board in accordance with Article VII.)
- T. Temporary Structures. No temporary structure of any kind, such as a house, trailer, tent, garage or other outbuilding shall be placed or erected on any lot nor shall any overnight camping be permitted on any lot.
- U. Ditches and Swales. It shall be the duty of the Owner on every lot in the Development on which any part of any open storm drainage ditch or swale is situated to keep such portion thereof as may be situated upon the lot

continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably necessary to accomplish the purposes of this subsection. All Owners, if necessary, shall install dry culverts between the road rights-of-way and their lots in conformity with specifications and recommendations of the Planning Department of the City of Noblesville, and of the appropriate zoning bodies.

- V. Non-Residential Usage. No industry, trade or other commercial or religious activity, education or otherwise, designed for profit, altruism or otherwise shall be conducted, practiced or permitted on the Real Estate, without prior written approval of the Board.
- W. Compliance with Rules. All Owners and members of their families, their guests, or invitees, and all occupants of any Dwelling Unit or other persons entitled to use the same shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board or its authorized Committees governing the operation, use and enjoyment of the Common Properties.
- X. Lot Maintenance. Each Owner shall keep his Lot in good order, condition, and repair and free of debris, all in a manner and with such frequency as is consistent with good property management.
- Y. Compliance with Zoning Commitments. So long as any Zoning Commitments are in effect, no use shall be made of any part of the Real Estate which violates such Commitments, and all Owners, members of their families, their guests, tenants, invitees and all occupants or other parties entitled to use or who may use any part of the Real Estate shall at all times fully comply with, the terms, covenants, provisions, conditions, limitations, restrictions and requirements contained and described in the Zoning Commitments.

## **IX. EASEMENTS AND LICENSES**

- A. Easement of Access and Enjoyment Over Common Property. Every Owner is hereby granted and shall have a right and easement (in common with all other Owners) of enjoyment in, over, and upon the Common Property, and a right of access to and from his/her Lot, which rights shall be appurtenant to, and shall pass with the title to, his/her Lot, subject to the terms and limitations set forth in this Declaration, subject to such rules and regulations as the Association shall from time to time promulgate. An Owner may delegate his/her rights of access and enjoyment to family members, occupants, guests and invitees.

- B. Right of Entry for Repair. The duly authorized agents, officers, contractors, and employees of the Association shall have a right of entry and access to the Property, including without limitation the Lots, for the purpose of performing the Association's rights or obligations set forth in this Declaration. The Association may enter any Lot to remove or correct any violation of this Declaration or the Rules, or to maintain, repair, and replace the Common Property, but only during reasonable hours and after providing seventy-two (72) hours advance notice to the Owner, except in cases of emergency.
  
- C. Easement for Utilities and Other Purposes. The Board or Developer may convey easements over the Common Property to any entity for the purpose of constructing, installing, maintaining, and operating poles, pipes, conduit, wires, ducts, cables, and other equipment necessary to furnish electrical, gas, sewer, water, telephone, cable television, and other similar utility or security services, whether of public or private nature, to the Property and to any entity for such other purposes as the Board or Developer deems appropriate; provided that such equipment or the exercise of such easement rights shall not unreasonably interfere with the Owners' use and enjoyment of the Property. The Board or Developer may grant such easements over all portions of the Property for the benefit of adjacent properties as the Board or Developer deems appropriate; provided that the grant of such easements imposes no undue, unreasonable, or material burden or cost upon the Property; and further provided that the Board or Developer may not convey any easement over a Lot without the prior written consent of the Owner of such Lot (which consent shall not be unreasonably delayed or withheld).
  
- D. Easements for Services. A non-exclusive easement is hereby granted to all police, firemen, ambulance operators, mailmen, deliverymen, garbage removal personnel, and all similar persons, and to the local governmental authorities and the Association (but not to the public in general) to enter upon the Common Property to perform their duties.

## **X. MISCELLANEOUS**

- A. Term. This Declaration shall bind and run with the land for a term of 30 years from and after the date that this Declaration is filed for recording with the appropriate governmental office and thereafter shall automatically renew forever for successive periods of 10 years each, unless earlier terminated by a majority of the Owners.

- B. Enforcement; Waiver. This Declaration may be enforced by any proceeding at law or in equity by the Developer, any Owner, the Association, the Design Review Board, and their respective heirs, successors and assigns, against any person(s) violating, or attempting to violate, any covenant or restriction, to restrain and/or to enjoin violation, to obtain a decree for specific performance as to removal of any nonconforming Improvement, and to recover all damages, costs of enforcement and any other costs incurred (including without limitation reasonable attorneys' fees). Failure of Developer, the Association or any Owner to enforce any provision of this Declaration or the Rules in any manner shall not constitute a waiver of any right to enforce any violation of such provision. By accepting a deed to a Lot, each Owner is deemed to waive the defenses of laches and statute of limitations in connection with the enforcement of this Declaration or the Rules. The Owners of any Lot subject to these Restrictions by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every Restrictions and agreement herein contained. By acceptance of such deed or execution of such contract, the Owner acknowledges the rights and powers of the Developer, the Association, the Board of Directors, Design Review Board and other such authorized Committees, with respect to these Restrictions and other rules authorized to be promulgated herein, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owners covenant and agree and consent to and with the Developer, the Association, the Board of Directors, Design Review Board and other such authorized Committees, and to and with the Owners and subsequent Owners of each of the Lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.
- C. Amendments by Developer. Until the Turnover Date, Developer may, in its sole and absolute discretion, unilaterally amend this Declaration at any time and from time to time, without the consent of any other Owners. Any such amendment may impose covenants, conditions, restrictions and easements upon the Property in addition to those set forth herein including, without limitation, restrictions on use and covenants to pay additional charges with respect to the maintenance and improvement of the Property. After the Turnover Date, Developer may unilaterally amend this Declaration, without the consent of any other Owners, if such amendment is: (a) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial order, (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots, (c) necessary to conform to the requirements of United States Federal Housing Administration, or (d) necessary to correct errors; provided, however, any such amendment shall not materially adversely affect the title to any Lot

unless the Owner thereof has consented to such amendment in writing. No amendment may remove, revoke, or modify any right or privilege of Developer without the written consent of Developer or the assignee of such right or privilege. Developer shall have the right and power, but neither the duty nor the obligation, in its sole and absolute discretion and by its sole act, to subject additional property to this Declaration at any time and from time to time by executing and recording in the appropriate governmental office an amendment to this Declaration specifying that such additional property is part of the Property. Such amendment to this Declaration shall not require the joinder or consent of the Association, other Owners, mortgagees or any other person. In addition, such amendments to the Declaration may contain such supplementary, additional, different, new, varied, revised or amended provisions and memberships as may be necessary or appropriate, as determined by Developer, to reflect and address the different character or intended development of any such additional property.

- D. Amendments by Owners. Except as provided above or otherwise in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:
1. Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.
  2. Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the votes of all Owners.
  3. Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.
  4. Adoption. Any proposed amendment to this Declaration must be approved during the first twenty (20) years by a vote of the Owners to which not less than seventy-five percent (75%) of the votes of the Corporation are allocated and thereafter by sixty-seven percent (67%) of such Owners. The instrument of amendment must be signed by such Owners and recorded. In the event any Lot or Dwelling Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

5. Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the Office of the Recorder of Hamilton County, Indiana, and such amendment shall not become effective until so recorded.
- E. Developer's Rights to Complete Development. Developer shall have the right to: (a) complete the development, construction, promotion, marketing, sale, resale and leasing of properties; (b) construct or alter Improvements on any property owned by Developer; (c) maintain model homes, offices for construction, sales or leasing purposes, storage areas, construction yards or similar facilities on any property owned by Developer or the Association; or (d) post signs incidental to the development, construction, promotion, marketing, sale and leasing of property within the Property. Further, Developer shall have the right of ingress and egress through the streets, paths and walkways located in the Property for any purpose whatsoever, including, but not limited to, purposes related to the construction, maintenance and operation of Improvements. Nothing contained in this Declaration shall limit the rights of Developer or require Developer to obtain approval to: (i) excavate, cut, fill or grade any property owned by Developer or to construct, alter, remodel, demolish or replace any Improvements on any Common Property or any property owned by Developer as a construction office, model home or real estate sales or leasing office in connection with the sale of any property; or (ii) require Developer to seek or obtain the approval of the Association or the Design Review Board for any such activity or Improvement on any Common Property or any property owned by Developer. Nothing in this Section shall limit or impair the reserved rights of Developer as elsewhere provided in this Declaration.
- F. Developer's Rights to Replat Developer's Property. Developer reserves the right, at any time and from time to time, to amend, alter or replat any plat or development plan and to amend any zoning ordinance which affects all or any portion of the Property; provided, however, that only real property owned by Developer shall be the subject of any such amendment, alteration or replatting. Each Owner and Member and the Association, for themselves and their successors and assigns, hereby consents to and approves any such amendment, alteration or replatting and shall be deemed to have joined in the same.
- G. Mortgagee Rights. A holder or insurer of a first mortgage upon any Lot, upon written request to the Association (which request shall state the name and address of such holder or insurer and a description of the Lot) shall be entitled to timely written notice of:
- (a) any proposed amendment of this Declaration;

- (b) any proposed termination of the Association; and
- (c) any default under this Declaration which gives rise to a cause of action by the Association against the Owner of the Lot subject to the mortgage of such holder or insurer, where the default has not been cured in 60 days.

Each holder and insurer of a first mortgage on any Lot shall be entitled, upon request and at such mortgagee's expense, to inspect the books and records of the Association during normal business hours.

- H. Indemnification. The Association shall indemnify every officer and trustee of the Association against any and all claims, liabilities, expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or trustee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board) to which he/she may be a party by reason of being or having been an officer or trustee. The officers and trustees shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misconduct, bad faith or gross negligence. The officers and trustees of the Association 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 trustees may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and trustee free from and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided herein shall not be exclusive of any other rights to which any officer or trustee, or former officer or trustee, may be entitled.
- I. Severability. If any article, section, paragraph, sentence, clause or word in this Declaration is held by a court of competent jurisdiction to be in conflict with any law of the State, then the requirements of such law shall prevail and the conflicting provision or language shall be deemed void in such circumstance; provided that the remaining provisions or language of this Declaration shall continue in full force and effect.
- J. Captions. The caption of each Article, section and paragraph of this Declaration is inserted only as a matter of reference and does not define, limit or describe the scope or intent of the provisions of this Declaration.
- K. Notices. Notices to an Owner shall be given in writing, by personal delivery, at the Lot, if a residence has been constructed on such Lot, or by depositing such notice in the United States Mail, first class, postage

prepaid, to the address of the Owner of the Lot as shown by the records of the Association, or as otherwise designated in writing by the Owner.

IN WITNESS WHEREOF, the Developer has caused the execution of this Declaration as of the date first above written.

BAY COMMUNITIES, LLC  
an Indiana Limited Liability Company

BY: \_\_\_\_\_  
Bruce Sklare, Member

Date: August \_\_\_\_, 2000

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF HAMILTON            )

Before me, a Notary Public in and for said County and State, personally appeared Bruce Sklare, on behalf of Bay Communities, LLC, who acknowledged the execution of the foregoing.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of August, 2000.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC, A resident of Hamilton  
County, Indiana

Printed: \_\_\_\_\_

This instrument prepared by: Bruce M. Bittner, Attorney at Law  
CHURCH, CHURCH, HITTLE & ANTRIM  
938 Conner Street, P. O. Box 10  
Noblesville, IN 46060  
(317) 773-2190



**CODE OF BY-LAWS  
OF  
ARBOR GROVE HOMEOWNERS ASSOCIATION,  
INC.**

**ARTICLE 1: IDENTIFICATION**

**Section 1.01. Name.** The name of the Corporation is Arbor Grove Homeowners Association, Inc.

**Section 1.02. Principal Office and Resident Agent.** The location of the principal office of the Corporation and the designation of its resident agent shall be as specified in the Articles of Incorporation, such location or such designation or both shall be changed in accordance with the requirements of the Act, in which case the notice of the change that is required by the Act (and the more or most recent of such notices, if two or more shall have been filed) shall be conclusive as to the matters covered by such notice.

**Section 1.03. Definitions.** The definitions and terms as defined and used in the Declaration of Covenants, Easements, Conditions and Restrictions for Arbor Grove Homeowners Association, Inc. shall have the same meaning in these By-Laws and reference is specifically made to Article 1 thereof containing definitions of terms.

**ARTICLE 2: MEMBERSHIP**

Section 2.01. Qualification. The qualifications for membership in the Corporation shall be those prescribed in the Articles and the Declarations of Covenants, Easements, Conditions and Restrictions for Arbor Grove Homeowners Association, Inc. (hereinafter sometimes referred to as the "Declaration"). Section 2.02. Privileges of Members. The Members (and any person who both belongs to the family of a Member and has the same residence as the Member to which family he belongs) and any person who is a guest of a Member shall have the privilege of using the Common Areas in accordance with the Declaration, the Articles, the By-Laws, and such rules and regulations for the use of the Common Area as may be adopted from time to time by the Board of Directors.

**ARTICLE 3: MEETINGS OF MEMBERS**

**Section 3.01. Place of Meetings.** All meetings of the Members shall be held at such place in Hamilton County, Indiana as may be designated by the Board of Directors and specified in the respective notices or waivers of notice thereof.

**Section 3.02. Annual Meetings.** An annual meeting of the Members shall be held at 7:30 p.m. on the second Monday in January of each calendar year, or such other date that the Board of Directors may designate upon giving proper notice in accordance with the provisions set forth below.

**Section 3.03. Special Meetings.** Special meetings of the Members may be called by the President, by a majority of the Board of Directors, or by written petition signed by not less than one-sixth (1/6) of all the Members. Upon request in writing delivered to the President or the Secretary by a Person or Persons entitled to call a special meeting, it shall be the duty of the President or the Secretary to give notice to the Members of such meeting, and, if such request is refused, the Person or Persons making such request may call a meeting giving notice in the manner hereinafter provided. Business transacted at all special meetings shall be limited to subjects in the call or waiver of notice, and matters germane thereto.

**Section 3.04. Notice of Meetings.** A written or printed notice stating the place, day and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be mailed or delivered by the Secretary or by the officer or Person calling the meeting to each Member at such address as appears on the records of the Corporation not more than thirty (30) nor less than ten (10) days before the date of any regular meeting and not more than thirty (30) nor less than five (5) days before the date of any special meeting. Notice of any meeting may be waived in writing filed with the Secretary by a Member if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place of the meeting. Attendance at any meeting shall constitute a waiver of notice of that meeting.

**Section 3.05. Voting Lists.** At least ten (10) days before each regular meeting of Members and at least five (5) days before any special meeting of Members, the Secretary shall make a complete list of Members entitled to vote at the meeting, which list may be inspected by any Member, for any proper purpose, at any reasonable time.

**Section 3.06. Quorum.** At any meeting of the Members, Members constituting ten percent (10%) plus one of the votes of the Association present in person or by proxy executed in writing, shall constitute a quorum for the transaction of business, except as otherwise provided by law.

**Section 3.07. Voting Rights.** The voting rights of the Members shall be as prescribed in the Articles of Declaration.

**Section 3.08. Method Of Voting.** A vote attributable to a Lot shall be cast as follows:

(a) Single Owner or Occupant. Where an individual is the sole Owner of a Lot or the sole Occupant of a residence the vote attributable to that Lot or residence shall be cast by such individual.

(b) Multiple Owners or Occupants. When a Lot is owned by two or more individuals, whether as joint tenants, tenants in common, or tenants by the entireties, or by a partnership, or when a residence is occupied by more than two individuals as joint lessees, there shall be only one voting representative entitled to cast the vote attributable to such Lot or residence. The partners or those individuals owning the Lot or those individuals occupying the residence shall determine among themselves who shall cast such vote. In the event agreement is not reached, the vote attributable to such Lot or residence shall not be cast.

(c) Voting by Corporation or Trust. Where a corporation or trust is the owner of a Lot, the trustee may cast the vote attributable to such Lot on behalf of the trust and the agent or other representatives of the corporation duly empowered by the board of directors of such corporation shall cast the vote to which the corporation is entitled.

**Section 3.09. Proxies.** A Member may vote in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Member shall designate his attorney-in-fact in writing, delivered to an officer of the Corporation prior to the commencement of the meeting.

## **ARTICLE 4: BOARD OF DIRECTORS**

**Section 4.01 Functions.** The business, property and affairs of the Corporation shall be managed and controlled by a Board of Directors as from time to time constituted (herein collectively call the "Board" or "Directors" and individually called "Director").

**Section 4.02 Eligibility.** Until the Turnover Date, the Directors may include any individual

duly appointed by the Developer. After the Turnover Date, no person shall be a Director who is not a Member.

**Section 4.03 Number.** Except and unless otherwise provided in the Declaration, the number of Directors comprising the Board shall be three (3) which number may from time to time be increased to a number of no more than six (6) by resolution adopted by not less than a majority of the Board of Directors. No reduction in the number of Directors shall have the effect of removing a Director from office prior to the expiration of his term. In the event the number of Directors is increased as provided herein, the election of the additional Director or Directors shall be by a vote of the Members entitled to elect such additional Director or Directors according to a procedure established by the Board by resolution which is consistent with the requirements of Section 4.06.

**Section 4.04 Nomination.** Candidates for election to the Board of Directors shall file a signed petition of candidacy with the Election Committee at least three (3) weeks prior to the annual meeting. The Election Committee shall provide all Members the names of all bona fide candidates not less than ten (10) days before the annual meeting.

**Section 4.05 Election.** Directors shall be elected at the annual meeting provided in Article 3. The Board may, by resolution, establish such election procedures therefore, including certification requirements, as it deems appropriate. Voting for the Board of Directors shall be by secret written ballot. The ballot shall be prepared by the Election Committee and shall contain the name of each person nominated for election. Those persons receiving the highest number of votes shall be elected.

**Section 4.06 Term.** Except and unless otherwise provided in the Declaration, each Director shall serve for a term of two (2) years or until his successor is elected and qualified. Directors shall be limited to four (4) consecutive terms.

**Section 4.07 Resignation.** Any Director may resign at any time by giving written notice of such resignation to the President or the Secretary of the Board. Such resignation shall be made in writing and shall take effect at the time specified therein, and, if no time is specified, at the time of its acceptance by the President or Secretary. The acceptance of a resignation shall not be necessary to make it effective.

**Section 4.08 Removal.** Any Director may be removed with or without cause by vote of a majority of the Members who are eligible to elect the Director at a special meeting of such Members duly called and constituted.

**Section 4.09 Vacancies.** Any vacancy occurring on the Board of Directors caused by death, resignation or otherwise, shall be filled by a Member, who will act as an interim Director, at the next meeting by way of a vote of a majority of the remaining members of the Board. If a majority of the remaining members of the Board cannot agree on a person to fill any such vacancy, a special meeting of the Members shall be called to select a person to fill such a vacancy.

**Section 4.10 Meetings.** The Board of Directors shall meet in each year immediately after the annual meeting of the Members, at the place where such meeting of the Members has been held, for the purpose of organization, election of officers, and consideration of any other business that may properly be brought before the meeting. No notice shall be necessary for the holding of this annual meeting. If such meeting is not held as above provided, the election of officers may be held at any subsequent meeting of the Board specifically called in the manner provided in Section 4.12. Special meetings of the Board may be called by the President and shall be called by order thereof upon the written request of not less than one-third (1/3) of the membership of the Board, which request shall set forth the business to be conducted at such meeting.

**Section 4.11 Initial Meetings.** The first order of business at the initial meeting of the initial Board of Directors shall be the adoption of these By-Laws and the certification thereof by the

Secretary of the Board.

**Section 4.12 Notice of Meetings.** Notice of all meetings of the Board of Directors, except as herein otherwise provided, shall be given by mailing the same at least three (3) days or by telephoning the same at least twelve (12) hours before the meeting to the usual business or residence address of the Director as shown upon the records of the Corporation. Notice of any meeting of the Board may be waived in writing filed with the Secretary by any Director if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place of the meeting. Attendance at any meeting of the Board shall constitute a waiver of notice of that meeting unless that Director's attendance is made for the purpose of objecting to the calling of the meeting for the reason of improper notice.

**Section 4.13 Quorum.** A quorum of the Board of Directors at any annual or special meeting of the Board shall be a majority of the duly qualified members of the Board occupying office, except for the initial Board of Directors a quorum for which will require 100% attendance.

**Section 4.14 Committees.**

**(a) Election Committee.** The Board of Directors, by vote of a majority of Directors then serving, shall appoint an Election Committee no later than two (2) months prior to the date of the annual meeting. The Election Committee shall consist of a chairman and at least four (4) Members none of whom shall be candidates for office. It shall be the duty of the Election Committee to provide supervision of the nomination and election of Directors in accordance with the provisions of the Articles and these By-Laws and with procedures adopted by the Board of Directors. Record of same shall be maintained and kept by the chairman of the Elections Committee.

**(b) Other Committees.** The Board of Directors by resolution adopted by a majority of the Board, may designate one or more committees, each of which shall consist of two (2) or more Directors, which committees, to the extent provided in said resolution, shall have and exercise the authority of the Board in the management of the Corporation. Other committees not having and exercising the authority of the Board in the management of the Corporation may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the Board, or any individual Director, of any responsibility imposed upon it or him by law.

**Section 4.15 Powers.** All the corporate powers except as otherwise provided herein by law, shall be vested in and shall be exercised by the Board of Directors. Said powers shall include, but not be limited to:

(a) The power to adopt, publish, and enforce rules and regulations governing the use of the Lots and Common Areas;

(b) The power to contact, lease or purchase for the benefit of the Members such property, equipment, materials, labor and services as may be necessary in the judgment of the Board;

(c) The power to exercise the powers and perform the duties of the Corporation granted, imposed, authorized or permitted by the Declaration and any Supplementary Declaration, the exercise of which is not reserved or committed to the membership by the Articles or By-Laws;

(d) The power to make and collect Assessments and charges, establish and collect membership dues, and levy and collect fines for the violation of rules and regulations governing the use of the Common areas; and

(e) The power to employ legal counsel, architects, engineers, contractors, accountants, consultants, managers, independent contractors and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the maintenance, repair, replacement, restoration, and operation of the Common Areas and the business and affairs of

the Corporation.

**Section 4.16 Duties.** It shall be the duty of the Board of Directors to:

(a) Cause the Common Areas to be maintained in good, clean, attractive and sanitary condition, order and repair;

(b) Adopt and publish rules and regulations, including fees, if any, governing the use of the Common Areas and facilities located thereon, and the personal conduct of the Members, members of their families, and their guests;

(c) Suspend the right of any Owner to use the Common Areas during any period during which such Owner shall be in default for more than thirty (30) days after notice in the payment of any Assessment. Such rights of the Members may also be suspended during any period during which such Owner shall be in violation, for more than forty-five (45) days after notice, of any provisions of the Declaration or any rules and regulations;

(d) Cause to be kept a complete record of all its corporate affairs, including rules and regulations, if any, make such records available for inspection, by any Member or his authorized agent, and present an annual report thereof to the Members;

(e) Supervise all officers, agents and employees of the Corporation and see that their duties are properly performed;

(f) Issue upon demand by any Member a certificate setting forth whether or not any Assessment has been paid and giving evidence thereof for which a reasonable charge may be made;

(g) Designate depositories for the Corporation funds, designate those officers, agents and/or employees who shall have authority to withdraw funds from such accounts on behalf of the Corporation, and cause such persons to be bonded, as it may deem appropriate;

(h) Hold a public hearing on the proposed annual budget and approve the annual budget by a two-thirds (2/3) vote of the Directors;

(i) By a two-thirds (2/3) vote of the Directors, fix annual General and Special Assessments at an amount sufficient to meet the obligations imposed by the Declaration and all Supplementary Declarations;

(j) Annually set the date(s) Assessments are due and decided what, if any, interest rate is to be applied to Assessments which remain unpaid thirty (30) days after they become due;

(k) Send written notice of each Assessment to every Owner subject thereto at least thirty (30) days in advance of the due date of the Assessment or first installment thereof;

(l) Cause the lien against any property for which Assessments are not paid within thirty (30) days after due date to be foreclosed or cause an action of law to be brought against the Owner personally obligated to pay same;

(m) Procure and maintain adequate insurance to protect the Corporation, its employees and its personal and real properties;

(n) Enter into mortgage agreements and obtain capital debt financing subject to the provisions of the Declaration;

(o) Appoint such committees as are prescribed in Section 4.14; and

(p) Exercise their powers and duties in good faith, with a view to the interests of the Corporation and to this end adopt appropriate guidelines for action on matters where a

potential conflict of interest may exist.

**Section 4.17 Non-Liability of Directors.** The Directors shall not be liable to the Members for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Members shall indemnify and hold harmless each of the Directors against any and all liability to any Person arising out of contracts made by the Board on behalf of the Corporation unless any such contract shall have been made in bad faith or is contrary to the provisions of the Articles, By-Laws, or the Act. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Members and as their agent. The liability of any Member arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the Directors shall be limited to such percentage of the total liability or obligation thereunder as is equal to a fraction, the numerator of which is the number of Lots in the subdivision affected thereby. Every contract made by the Board or any management agent on behalf of the Corporation, shall provide that the Board of Directors is acting as agent for the Members and shall have no personal liability thereunder, except in their capacity as Members and then only to the extent of their fractional interest described above.

**Section 4.18 Additional Indemnity of Directors.** The Members shall indemnify any Person, his heirs, assigned, and legal representatives, made a part to any action, suit or proceeding by reason of the fact that he is or was a Director, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which item shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Members shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or on behalf of the Corporation, or by any officer or employee thereof, or by any accountant, attorney or other Person employed by the Corporation to render advice or service unless such Director had knowledge of the falsity or incorrectness thereof, nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

**Section 4.19 Transactions Involving Affiliates.** No contract or other transactions between the Corporation and one or more of its Directors, or between the Corporation and any Persons in which one or more of the Directors are directors, officers, partners, or employees or are pecuniarily or otherwise interested, shall be void or voidable because such Director or Directors are present at the meeting of the Board or any committee thereof which authorizes or approves the contract or transaction, or because his or their votes are counted for such purpose if:

(a) The fact of the affiliation or interest is disclosed or known to the Board or a majority thereof and noted in the minutes, and the Board authorizes, approves, or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or

(b) The fact of the affiliation or interest is disclosed or known to the Members, or a majority thereof, and they approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or

(c) The contract or transaction is commercially reasonable to the Corporation at the time it is authorized, ratified, approved or executed.

Affiliated or interested Directors may be counted in determining the presence of a quorum of any meeting of the Board or committee thereof which authorizes, approves or ratifies any

contract or transaction, and may vote as if they were not so affiliated or not so interested.

**Section 4.20 Insurance.** The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all the structures located in the Common Area, if any, whether owned or leased by the Corporation, against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement costs or any repair or reconstruction work in the event of damage or destruction from any hazard, and shall also obtain a broad form public liability policy covering the Common Areas and all damage or injury caused by the negligence of the Corporation or any of its agents. All such insurance policies shall contain a provision that all Members shall, in appropriate circumstances, be able to recover damages as claimants under such insurance. The insurance may include coverage against vandalism. Premiums for all such insurance shall be included in the General Assessment. In the event of damage or destruction by fire or other casualty to any structure covered by insurance written in the name of the Corporation, the Board of Directors shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damage. All such insurance proceeds (if the amount of such proceeds exceeds \$5,000.00) shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency with the proviso agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board of Directors, or by their duly authorized agent. In such event, the Board of Directors shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed structure or structures. In the event that the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors may level a Special Assessment in the manner specified in the Declaration to make up any deficiency. Excess insurance proceeds, if any, shall become a part of the Corporation's reserve for replacements.

**Section 4.21 Compensation.** No Director shall receive any compensation for any service he may render to the Corporation unless and as provided in Section 5.01 herein. He may, however, be reimbursed for his actual expenses incurred in the performance of his duties.

## **ARTICLE 5: THE OFFICERS OF THE CORPORATION**

**Section 5.01 Officers and Agents.** The officers of the Corporation shall consist of a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as the Board of Directors may, by resolution, designate from time to time. Any two or more offices may be held by the same person, except that the duties of the President and the Secretary shall not be performed by the same person. The Board of Directors may, by resolution, create, appoint and define the duties and fix the compensation of such officers and/or agents as, in its discretion, is deemed necessary, convenient or expedient for carrying out the purposes for which the Corporation is formed; provided, however, that officers and agents shall be compensated only for actual services performed on behalf of the Corporation.

**Section 5.02 Election.** Term of Office and Qualifications The candidates for the office position vacant by virtue of a term which shall then be expiring shall be chosen annually by the Election Committee. Each officer shall hold office until the next annual meeting of the Board of Directors held at the time his term shall then be expiring or until his successor is chosen and qualified.

**Section 5.03 Vacancies.** In the event an office of the Corporation becomes vacant by death, resignation, retirement, disqualification or any other cause, the Board of Directors shall elect a person to fill such vacancy, and the person so elected shall hold office and serve until the term of the position held expires or until the election and qualification of his successor.

**Section 5.04 President.** The President, who shall be chosen from among the membership of the Board of Directors, shall preside at all meetings of the Board, if present; shall appoint the

chairmen and members of all standing and temporary committees, except the Elections Committee, subject to the review of the Board of Directors; shall be the executive officer of the Corporation; shall have and exercise general charge and supervision of the affairs of the Corporation; and shall do and perform such other duties as these By-Laws provide or as may be assigned to him by the Board of Directors.

**Section 5.05 Vice President.** And Vice President may perform all duties incumbent upon the President during the absence or disability of the President and shall perform such other duties as these By-Laws may require or as may be assigned to him by the President or the Board of Directors.

**Section 5.06 Secretary.** The Secretary shall have the custody and care of the corporate records and the minute book of the Corporation. He shall attend all the meetings of the Board of Directors and Members of the Corporation, and shall keep, or cause to be kept in a book provided for the purpose, a true and complete record of the proceedings of such meetings, and shall perform a like duty for all standing committees of the Board of Directors when required. He shall attend to the giving and serving of all notices of the Corporation, shall file and take care of all papers and documents belonging to the Corporation, and shall perform other duties as may be required by these By-Laws or as may be prescribed by the Board of Directors.

**Section 5.07 Treasurer.** The Treasurer shall keep correct and complete records of account, showing accurately at all times the financial condition of the Corporation. He shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into the possession of the Corporation. He shall immediately deposit all funds of the Corporation coming into his hands in a national bank or other depository to be designated by the Board of Directors, and shall keep such bank account in the name of the Corporation. He shall furnish at meetings of the Board of Directors, or whenever requested, a statement of the financial condition of the Corporation and shall perform such other duties as may be required by these By-Laws or as may be prescribed by the Board of Directors.

**Section 5.08 Removal.** Any officer of the Corporation may be removed from office by the affirmative vote of two-thirds (2/3) of all the Directors at any regular or special meeting of the Board of Directors called for the purpose for nonfeasance, malfeasance, or misfeasance, for conduct detrimental to the interests of the Corporation, for lack of sympathy with its objects, or for refusal to render reasonable assistance in carrying out its purposes. Any officer whose removal is proposed shall be entitled to at least ten (10) days notice in writing by mail of the meeting of the Board of Directors at which such removal is to be voted upon and shall be entitled to appear before and be heard by the Board of Directors at such meeting.

**Section 5.09 Resignation.** Any officer or member of a committee may resign at any time. Such resignation shall be made in writing, and shall take effect at the time specified therein, and, if no time be specified, at the time of its receipt by the President or Secretary of the Corporation. The acceptance of a resignation shall not be necessary to make it effective.

## **ARTICLE 6: DESIGN REVIEW BOARD**

**Section 6.01 Composition.** Except as provided in Article VII of the Declaration, the Design Review Board shall be comprised of three (3) Members elected by the Board of Directors by a vote of a majority of the Directors then serving. No more than one-third (1/3) of the Design Review Board shall simultaneously serve as a member of the Board of Directors.

**Section 6.02 Organization.** The Design Review Board shall elect from among its membership a chairman, secretary and such other officers as it deems appropriate.

**Section 6.03 Quorum.** A quorum for action by the Design Review Board shall be a majority

of its members, but in no event less than two (2) members.

**Section 6.04 Duties.** It shall be the duty of the Design Review Board to regulate the external design, appearance, location and maintenance of the Arbor Grove Subdivision and of improvements thereon and to regulate such uses of property, all as provided in the Declaration.

**Section 6.05 Procedures.** In order to protect consistency, the Design Review Board may formulate general guidelines, procedures and regulations and submit them for approval to the Board of Directors. Such guidelines, procedures and regulations shall be considered adopted policy of the Board of Directors unless rejected by a two-thirds (2/3) vote of the Board of Directors within thirty (30) days of the date of submission. The adopted guidelines, procedures and regulations shall be incorporated in the rules and regulations, if any, and the Design Review Board shall act in accordance therewith.

## **ARTICLE 7: CORPORATE BOOKS**

Except as otherwise provided by the laws of the State of Indiana, by the Declaration, Articles, or these By-Laws, the books and records of the Corporation may be kept at such place or places, within or without the State of Indiana, as the Board of Directors may from time to time by resolution determine, but all of such books and records shall be open for inspection to any Member at any reasonable time for purposes reasonably related to his interest as a Member.

## **ARTICLE 8: FINANCIAL AFFAIRS**

**Section 8.01 Contracts.** The Board of Directors may authorize any officer or agent to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to a specific instance; and unless authorized by the Board of Directors, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement, or to pledge its credit or render it liable pecuniarily for any purpose or to any amount.

**Section 8.02 Checks, Etc.** All checks, drafts, notes, bonds, bills of exchange, and order for the payment of money, shall, unless otherwise directed by the Board of Directors or required by law, be signed by any two of the following officers, who are different persons: President, a Vice President, Secretary or Treasurer. The Board of Directors, however, may designate officers or employees of the Corporation, other than those named above, who may, in the name of the Corporation, execute drafts, checks and orders for the payment of money on its behalf.

**Section 8.03 Investments.** The Corporation shall have the right to retain all or any part of any securities or property acquired by it in whatever manner, and to invest and reinvest any funds held by it, according to the judgment of the Board of Directors.

**Section 8.04 Reserve for Replacement.** The Board of Directors shall establish and maintain a reserve fund for replacements by the allocation and payment to such reserve fund of an amount determined annually by the Board to be sufficient to meet the cost of periodic maintenance, repairs, renewal and replacement of the buildings and improvements located on the Common Areas and of equipment and Property, including but not limited to maintenance and repair of buildings, if any, and resurfacing of streets. In determining the amount, the Board shall take into consideration the expected useful life of such improvements, projected increases in the cost of materials and labor, interest to be earned by such fund and the advice of the managing agent or any consultants the Board may employ. Such fund shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested

in obligations of or fully guaranteed as to principal by, the United States of America. The reserve for replacements may be expended only for the purposes of effecting the maintenance, repair, renewal or replacement of the buildings and improvements located upon the Common Areas and the equipment. The Board shall annually review the adequacy of the Replacement Reserve Fund.

**Section 8.05 General Operating Reserve** The Board of Directors shall establish and maintain a reserve fund for general operating expenses of a non-recurring nature by the allocation and payment to such reserve fund not less frequently than annually of an amount described as follows:

(i) 3% of the amount of the General Assessment until the reserve fund is equal to 30% of the amount of the General Assessment;

(ii) thereafter, 2% of the amount of the General Assessment until the reserve fund is equal to 50% of the amount of the General Assessment, when payments to the reserve shall terminate.

Such fund shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of or fully guaranteed as to principal by the United States of America. The general operating reserve may be expended for operating contingencies of a non-recurring nature or for capital improvement or capital replacement or repair purposes, provided that a method for replenishment of the fund is simultaneously adopted by the Board.

**Section 8.06 Fiscal Year.** The fiscal year of the Corporation shall be determined by the Board or its appointed agent.

**Section 8.07 Assessment Year.** The assessment year of the Corporation shall be determined by the Board.

**Section 8.08 Auditing.** At the close of each fiscal year, the books and accounts of the Corporation shall be subjected to a 'Financial Compilation' by an independent Certified Public Accountant whose report shall be prepared and certified in accordance with generally accepted accounting standards. A copy of such report shall be made available to a Member at the request of such Member.

**Section 8.09 Assessments.** As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at a rate of eight percent (8%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay same or foreclose the lien against the property, and interest, costs, and reasonable attorneys' fees incurred by such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for assessments provided for herein.

## **ARTICLE 9: AMENDMENTS**

The power to make, alter, amend or repeal the By-Laws is vested in the Board of Directors, which power shall be exercised by the affirmative vote of a two-thirds (2/3) majority of the Directors present at any meeting of the Board; provided, however, that any such changes have been posted for the review and comment of the Members for a period of not less than thirty (30) days prior to such meeting.

These By-Laws have been duly adopted as of this 26th day of October, 2000, by vote of the initial Board of Directors.

\_\_\_\_\_  
Bruce T. Sklare, President

Attest:

\_\_\_\_\_  
Bruce M. Bittner, Secretary

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF HAMILTON        )

Before me, a Notary Public in and for said County and State, personally appeared Bruce T. Sklare, President and Bruce M. Bittner, Secretary, of the Arbor Grove Homeowner's Association, Inc., who acknowledged the execution of the foregoing Code of By-Laws, and who, having been duly sworn, stated that any representations therein contained are true.

WITNESS my hand and Notarial Seal this 30th day of October, 2000.

My Commission Expires:  
County, Indiana  
April 11, 2007

\_\_\_\_\_  
NOTARY PUBLIC, A resident of Hamilton

Printed: Rebecca M. Simpson

FIRST AMENDMENT TO THE  
DECLARATION OF COVENANTS, EASEMENTS  
CONDITIONS AND RESTRICTIONS  
FOR  
ARBOR GROVE

This FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, EASEMENTS CONDITIONS AND RESTRICTIONS FOR ARBOR GROVE (“First Amendment”) is made this \_\_\_\_ day of August, 2000, by BAY COMMUNITIES, LLC, an Indiana Limited Liability Company (“Developer”).

Whereas, the originally filed Declaration Of Covenants, Easements Conditions And Restrictions For Arbor Grove was recorded with the office of the Hamilton County Recorder on August 11, 2000 as document number 200000039852 (the “Original Declaration”); and

Whereas, Section V. paragraph C. (subtitled “annual assessments”) of the Original Declaration limited annual assessments to an amount not to exceed \$240.00; and

Whereas, the purpose of this First Amendment is to change the amount of \$240.00 to \$280.00.

NOW, THEREFORE, Declarant hereby amends that certain language on page 9 of the Original Declaration by deleting the originally stated Section V paragraph C in its entirety and substituting the following amended and restated Section V paragraph C in its place:

- C. Annual Assessments. Annually, on or before the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year and shall make available a copy of such proposed budget to each Owner prior to or with the notice to Owners of such annual meeting. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the assessments herein provided, whenever determined. The Board shall annually estimate the Common Expenses and the expenses, if any, it expects the

Association to incur in the Association's next ensuing fiscal year for the maintenance, operation and management of the Association (which may also include amounts, if any, for the Reserve Fund – as may be determined by the Board) and shall assess each Owner of a Lot an Annual Assessment equal to such estimated expenses divided by the total number of Lots. Each Owner shall be given written notice of such assessment against Lot and the Annual Assessments shall be paid in accordance with the procedures set forth in the Rules. Notwithstanding the foregoing to the contrary (i) prior to January 1, 2005 in no event shall the Annual Assessments for each Lot exceed \$280.00; and (ii) prior to the date that Developer relinquishes its right to appoint members of the Board as set forth in Article III, Paragraph A herein (the "Turnover Date"), Developer shall not pay the Annual Assessments applicable to Lots owned by Developer, but shall pay any deficit incurred in operating the Association.

IN WITNESS WHEREOF, the Developer has caused the execution of this Declaration as of the date first above written.

BAY COMMUNITIES, LLC  
an Indiana Limited Liability Company

BY: \_\_\_\_\_  
Bruce Sklare, Member

Date: August \_\_\_\_, 2000

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF HAMILTON            )

Before me, a Notary Public in and for said County and State, personally appeared Bruce Sklare, on behalf of Bay Communities, LLC, who acknowledged the execution of the foregoing.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of August, 2000.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC, A resident of Hamilton  
County, Indiana

Printed: \_\_\_\_\_

This instrument prepared by: Bruce M. Bittner, Attorney at Law  
CHURCH, CHURCH, HITTLE & ANTRIM  
938 Conner Street, P. O. Box 10  
Noblesville, IN 46060  
(317) 773-2190

SECOND AMENDMENT TO THE DECLARATION  
OF COVENANTS, EASEMENTS, CONDITIONS AND  
RESTRICTIONS FOR  
ARBOR GROVE

This SECOND AMENDMENT TO THE DECLARATION OF COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS FOR ARBOR GROVE ("Second Amendment") is made this \_\_\_\_ day of October, 2000 by BAY COMMUNITIES, LLC, an Indiana Limited Liability Company ("DEVELOPER").

Whereas, the originally filed Declaration Of Covenants, Easements Conditions And Restrictions For Arbor Grove was recorded with the office of the Hamilton County Recorder on August 11, 2000 as document number 200000039852 (the "Original Declaration"); and

Whereas, the First Amendment to The Declaration Of Covenants, Easements, Conditions and Restrictions for Arbor Grove was recorded with the office of the Hamilton County Recorder on August 16, 2000 as document number 200000040546 ("First Amendment"); and

Whereas, the Developer and the City of Noblesville are in agreement that certain subdivision entry-way monumentation or signage may be erected within the city's right-of-way along State Road 238, as long as adequate insurance is provided and maintained with respect to any such monumentation or signage; and

Whereas, this Second Amendment is intended for the primary purpose of memorializing the Association's obligation to maintain such insurance.

NOW, THEREFORE, Delarant hereby amends the Original Declaration as previously amended by amending and restating Section IV (titled "Rights and Obligations of the Association"), paragraph G (titled "Insurance"), subparagraph 1:

The Association shall be required to obtain and maintain adequate blanket property/casualty insurance, comprehensive public liability insurance and flood insurance covering all of the Common Property in an amount as is required by law or commonly required by prudent institutional mortgage investors. Except as otherwise stated below for improvements within a public road right-of-way, the public liability coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover all of the Common Properties and shall insure the Association, the Board of Directors, or any committee of the Association or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may act as agents or employees of any of the foregoing with respect to the Real Estate or the Development. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners.

With respect to any entry-way monumentation or signage that is located on the real estate and within any public road right-of-way, the liability insurance shall be provided in the minimum amount of \$300,000 for death or injury to any one person and \$1,000,000 in the aggregate for any one accident, (or in such other amounts as the City of Noblesville may reasonably require from time to time). Such policy shall list the City of Noblesville as an additional named insured with respect to any such monumentation or signage. Such policy shall provide for at least ten day's prior notice to the City of cancellation, and a certificate of insurance shall be provided to the City on an annual basis.

IN WITNESS WHEREOF, the Developer has caused the execution of this Declaration as of the date first above written.

BAY COMMUNITIES, LLC.  
an Indiana Limited Liability Company

By: \_\_\_\_\_  
BRUCE SKLARE, MEMBER

Dated: October \_\_\_\_\_, 2000

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF HAMILTON            )

Before me, a Notary Public in and for said County and State, personally appeared Bruce Sklare, on behalf of Bay Communities, LLC, who acknowledged the execution of the foregoing.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of October, 2000.

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC, A resident of Hamilton County,  
Indiana  
Printed: \_\_\_\_\_

This instrument prepared by: Bruce M. Bittner, Attorney at Law  
CHURCH, CHURCH, HITTLE & ANTRIM  
938 Conner Street, P. O. Box 10  
Noblesville, IN 46060  
(317) 773-2190

THIRD AMENDMENT TO THE DECLARATION  
OF COVENANTS, EASEMENTS, CONDITIONS AND  
RESTRICTIONS FOR  
ARBOR GROVE

This THIRD AMENDMENT TO THE DECLARATION OF COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS FOR ARBOR GROVE (“Third Amendment”) is made this \_\_\_\_ day of January, 2006 by BAY COMMUNITIES, LLC, an Indiana Limited Liability Company (“DEVELOPER”).

Whereas, the originally filed Declaration Of Covenants, Easements Conditions And Restrictions For Arbor Grove was recorded with the office of the Hamilton County Recorder on August 11, 2000 as document number 200000039852 (the “Original Declaration”); and

Whereas, the First Amendment to The Declaration Of Covenants, Easements, Conditions and Restrictions for Arbor Grove was recorded with the office of the Hamilton County Recorder on August 16, 2000 as document number 200000040546 (“First Amendment”); and

Whereas, the Second Amendment to The Declaration Of Covenants, Easements, Conditions and Restrictions for Arbor Grove was recorded with the office of the Hamilton County Recorder on October 24, 2000 as document number 200000053223 (“Second Amendment”); and

Whereas, this Third Amendment is now made for the primary purpose of clarifying that every lot that has been conveyed to an Owner shall be subject to assessment by the Association; and

Whereas, this Third Amendment is made by the Developer pursuant to the right to make such amendments as set forth in Article X (C) of the Original Declaration.

NOW, THEREFORE, Developer hereby amends the Original Declaration as previously amended by amending and restating Section III (titled “Membership and Voting Rights”) as follows:

**III. MEMBERSHIP AND VOTING RIGHTS**

- A. Membership. Every Owner shall be a member of the Association. For purposes of determining classes of membership, a Class A member shall be the owner of any conveyed lot, and a Class B member shall be the

owner of any undeveloped platted lot; and each reference to a lot in this Declaration shall be deemed to be a conveyed lot, or an unconveyed, platted or unplatted, lot, respectively, as more particularly set forth as follows. The Association shall have two (2) classes of membership:

1. Class A. Every person, group of persons or entity, other than the Declarant, who is a record owner of a fee interest in any lot shall, by this Declaration, be subject to assessment by the Association (as further set forth in Article V herein) and shall be classified as a Class A member, provided, however, that any such person, group of persons or entity who holds such interest solely as security for the performance of an obligation shall not be a member. A Class A membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. Class A members shall be entitled to one (1) vote for each lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record owner of a fee interest in any lot, then the vote for the membership appurtenant to such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot. In the event agreement is not reached, the vote attributable to such lot shall not be cast.
  
2. Class B. The Class B member shall be the Declarant, which shall be entitled to three (3) votes for each platted Lot owned. For purposes of determining voting rights and duties, it shall be assumed there is a total of 214 platted and unplatted lots within the Development and Declarant shall have the automatic right to plat and record a residential development plat, not to contain in excess of 214 Lots, without the consent or approval of the Association or any other person, firm or corporation. The Class B membership shall cease and be converted to a Class A membership upon the earlier of the following: (1) 90% of homes on lots are deeded to Owners; or (2) January 1, 2005. In the event all the lots have not been conveyed to owners or the Class B memberships have not been surrendered by the then holders thereof for cancellation on the books of the Association, Class B memberships existing, if any, at time of cancellation, shall automatically become Class A memberships excepting such Class A memberships shall not be subject to assessment or the lien of assessment until a home is constructed thereon.

Notwithstanding any language contained herein to the contrary, the "Turnover Date" shall be deemed to be February 15, 2006.

IN WITNESS WHEREOF, the Developer has caused the execution of this Declaration as of the date first above written.

BAY COMMUNITIES, LLC.  
an Indiana Limited Liability Company

By: \_\_\_\_\_  
BRUCE SKLARE, MEMBER

Dated: January \_\_\_\_\_, 2006

STATE OF INDIANA                    )  
  ) SS:  
COUNTY OF HAMILTON            )

Before me, a Notary Public in and for said County and State, personally appeared Bruce Sklare, on behalf of Bay Communities, LLC, who acknowledged the execution of the foregoing.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of January, 2006.

My Commission Expires:  
\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC, A resident of Hamilton  
County, Indiana  
Printed: \_\_\_\_\_

This instrument prepared by: Bruce M. Bittner, Attorney at Law  
CHURCH, CHURCH, HITTLE & ANTRIM  
938 Conner Street, P. O. Box 10  
Noblesville, IN 46060  
(317) 773-2190

**FIFTH AMENDMENT TO THE DECLARATION OF COVENANTS,  
EASEMENTS CONDITIONS AND RESTRICTIONS FOR ARBOR  
GROVE**

This FIFTH AMENDMENT TO THE DECLARATION OF COVENANTS, EASEMENTS CONDITIONS AND RESTRICTIONS FOR ARBOR GROVE (hereinafter referred to as "Fifth Amendment") is made this 6<sup>th</sup> day of August 2004, by BAY COMMUNITIES, LLC, and Indiana Limited Liability Company (hereinafter referred to as "Developer").

Whereas, the originally filed Declaration of Covenants, Easements conditions and Restriction for Arbor Grove was recorded with the office of the Hamilton County Recorder on August 11, 2000, as document number 200000039852 (hereinafter referred to as "Original Declaration"), and

Whereas, the first Amendment to The Declaration of Covenants, Easements conditions and Restriction for Arbor Grove was recorded with the office of the Hamilton County Recorder on August 16, 2000, as document number 200000040545 (hereinafter referred to as "First Amendment"), and

Whereas, the Second Amendment to The Declaration of Covenants, Easements conditions and Restriction for Arbor Grove was recorded with the office of the Hamilton County Recorder on October 24, 2000, as document number 200000053223 (hereinafter referred to as "Second Amendment"), and

Whereas, this Fifth Amendment is now made for the primary purpose of clarifying that every lot that has been conveyed to an Owner shall be subject to assessment by the Association; and

Whereas the purpose of this Fifth Amendment is made by the Developer pursuant to the right to make such amendments as set forth in Article X (C) of the Original Declaration.

NOW, THEREFORE, Developer hereby amends the Original Declaration as previously amended by amending and restating Section III (titled "Membership and Voting Rights") as follows:

**III. MEMBERSHIP AND VOTING RIGHTS**

- A. Membership. Every Owner shall be a member of the Association. For purposes of determining classes of membership, a Class A member shall be the owner of any conveyed lot, and a Class B member shall be the owner of any undeveloped platted lot; and each reference to a lot in this Declaration shall be deemed to be a conveyed lot, or an un conveyed, platted or unplatted,

lot, respectively, as more particularly set forth as follows. The Association shall have two (2) classes of membership:

- i. Class A. Every person, group of persons or entity, other than the Declarant, who is a record owner of a fee interest in any lot shall, by this Declaration, be subject to assessment by the Association (as further set forth in Article V herein) and shall be classified as a Class A member, provided, however, that any such person, group of persons or entity who holds such interest solely security for the performance of an obligation shall not be a member. A Class A membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment. Class A members shall be entitled to one (1) vote for each lot in which they hold the interest required for membership. In the event that more than one person, group of persons or entity is the record owner of a fee interest in any lot, then the vote for the membership appurtenant to such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot. In the event agreement is not reached, the vote attributable to such lot shall not be cast.
- ii. Class B. The Class B member shall be the Declarant, which shall be entitled to three (3) votes for each platted Lot owned. For purposes of determining voting rights and duties, it shall be assumed there is a total of 214 platted and unplatted lots within the Development and Declarant shall have the automatic right to plat and record a residential development plat, not to contain in excess of 214 Lots, without the consent or approval of the Association or any other person, firm or corporation. The Class B membership shall cease and be converted to a Class A membership upon the earlier of the following: (1) 90% of homes on lots are deeded to Owners; or (2) January 1, 2005. In the event all the lots have not been conveyed to owners or the Class B memberships have not been surrendered by the then holders thereof for cancellation on the books of the Association, Class B memberships existing, if any, at time of cancellation, shall automatically become Class A memberships excepting such Class A memberships shall not be subject to assessment or the lien of assessment until a home is constructed thereon.

Notwithstanding any language contained herein to the contrary, the "Turnover Date" shall be deemed to be February 15, 2006.

IN WITNESS THEREOF, the Developer has caused the execution of this declaration as of the date first above written.

BAY COMMUNITIES LLC  
an Indiana Limited Liability Company

BY: Bruce Sklare  
Bruce Sklare, member  
Dated: January 26, 2006

STATE OF INDIANA

COUNTY OF HAMILTON

Before me, a Notary Public in and for said County and State, personally appeared Bruce Sklare, on behalf of Bay Communities, LLC, who acknowledged the execution of the foregoing.

WITNESS my hand and Notarial Seal this 26<sup>th</sup> Day of January, 2006.

Roni Schweigrl, NOTARY PUBLIC  
County of Residence: Hamilton  
Commission Expires: February 23, 2008

This instrument prepared by Bruce M. Bittner, Attorney at Law  
CHURCH, CHURCH, HITTLE AND ANTRIM  
938 Conner Street, P.O. Box 10  
Noblesville, In 46060

**FOURTH AMENDMENT TO THE DECLARATION OF  
COVENANTS, EASEMENTS CONDITIONS AND RESTRICTIONS  
FOR ARBOR GROVE**

This FOURTH AMENDMENT TO THE DECLARATION OF COVENANTS, EASEMENTS CONDITIONS AND RESTRICTIONS FOR ARBOR GROVE (hereinafter referred to as "Fourth Amendment") is made this 6<sup>th</sup> day of August 2004, by BAY COMMUNITIES, LLC, and Indiana Limited Liability Company (hereinafter referred to as "Developer").

Whereas, the originally filed Declaration of Covenants, Easements conditions and Restriction for Arbor Grove was recorded with the office of the Hamilton County Recorder on August 11, 2000, as document number 200000039852 (hereinafter referred to as "Original Declaration"), and

Whereas, the first Amendment to The Declaration of Covenants, Easements conditions and Restriction for Arbor Grove was recorded with the office of the Hamilton County Recorder on August 16, 2000, as document number 200000040545 (hereinafter referred to as "First Amendment"), and

Whereas, the Second Amendment to The Declaration of Covenants, Easements conditions and Restriction for Arbor Grove was recorded with the office of the Hamilton County Recorder on October 24, 2000, as document number 200000053223 (hereinafter referred to as "Second Amendment"), and

Whereas, the Third Amendment to The Declaration of Covenants, Easements conditions and Restriction for Arbor Grove was recorded with the office of the Hamilton County Recorder on October 15, 2002, as document number 200200077308 (hereinafter referred to as "Third Amendment"), and

Whereas the purpose of this Fourth Amendment is to extend the time period for which the Declarant is responsible for paying the deficit of the Association.

NOW, THEREFORE, Declarant hereby amends the Original Declaration as previously amended by amending Section III, paragraph A, subparagraph B, as follows: the sentence stating the time Class B memberships shall cease shall be changed to "The Class B membership shall cease and be converted to a Class A membership upon the earlier of the following: 1) 90% of homes on lots are deeded to Owners; or 2) January 1, 2006." This change extends the time the Declarant shall be responsible for paying any deficit the association incurs (deficits are anticipated until about 90% of the homes are sold).

IN WITNESS THEREOF, the Developer has caused the execution of this declaration as of the date first above written.

BAY COMMUNITIES LLC  
an Indiana Limited Liability Company

BY: Bruce Sklare  
Bruce Sklare, member  
Dated: August 6<sup>th</sup>, 2004

STATE OF INDIANA

COUNTY OF HAMILTON

Before me, a Notary Public in and for said County and State, personally appeared Bruce Sklare, on behalf of Bay Communities, LLC, who acknowledged the execution of the foregoing.

WITNESS my hand and Notarial Seal this 6<sup>th</sup> day of August, 2004.

Jerry L March, NOTARY PUBLIC  
County of Residence: Marion  
Commission Expires: February 23, 2008

This instrument prepared by Bay Communities LLC.