

**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 6th 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 unconveyed, 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 26th 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
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