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## Subdivision Covenants and Restrictions

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF GOVERNORS POINTE**

JOHN B. VON ARX  
MARION COUNTY RECORDER  
135709 JN -68  
RECORDS & CLERK  
100 N. W. 10TH ST.  
MARIETTA, GA 30060

THIS DECLARATION made this 1st day of July, 1998, by **Bay Communities, LLC** (hereinafter referred to as "Declarant"),

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of all of the lands contained in the area shown on Exhibit A, attached hereto and made a part hereof, which lands will be subdivided and known as "**Governors Pointe**" (hereinafter referred to as the "Development"), and will be more particularly described in the plats thereof to be recorded in the office of the Recorder of Marion County, Indiana; and

**WHEREAS**, Declarant is about to sell and convey the residential lots situated within the platted areas of the Development and before doing so desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial covenants and restrictions and charges under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development and future home owners thereof.

**NOW, THEREFORE**, Declarant hereby declares that all of the platted lots and lands located within the Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants and restrictions all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the covenants, conditions and restrictions shall run with the land and shall be binding upon Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant's successors in title to any real estate in the Development.

1. **Drainage, Sanitary and Utility Easements.** There are strips of ground as shown on the plat marked Drainage, Sanitary and/or Utility Esmt. ("DU&SE") which are hereby reserved for the use of public utilities, including cable TV companies and sanitary sewer, but not including transportation companies, for the installation and maintenance of poles, mains, ducts, drains, lines, cables and wires, subject at all times to the proper authorities and to the easements herein granted and reserved, and such other further public service facilities as the undersigned owner of record may deem necessary along, through, in, over and under the strips of land shown on this plat.

2. **Building and Grounds Maintenance.** The owner or party in possession of each lot in the Development shall conform to the following standards:

- a) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- b) Remove all debris or rubbish;

- c) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of the Development;
- d) Cut down and remove dead trees;
- e) Where applicable, prevent debris and foreign material from entering drainage areas;
- f) Keep the exterior of all improvements in such a state of repair and maintenance as to avoid their becoming unsightly or detracting from the value of the general neighborhood;
- (g) Regularly treat or cause to be treated the lawn areas against weed and insect infestation;
- (h) Not allow hazardous materials to enter storm sewers.

In the event that any owner of a lot shall fail to maintain his lot and any improvements situated thereon in accordance with the provisions of these Restrictions, the property owners association, the Declarant or the owner or owners of any lot in the immediate neighborhood shall have the right, but not the obligation, by and through its agents and employees or contractors, to enter upon said lot and repair, mow, clean, or perform such other acts as may be reasonably necessary to make such lot and improvement situated thereon, if any, conform to the requirements of these Restrictions. The cost thereof shall be an expense of the lot owner, and such lot owner shall have a lien against said lot for the expense thereof, including court costs and reasonable attorney fees. Neither the Declarant, nor any of its agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

**3. Setback Lines.** Building setback lines ("BL") shall be established on the plat. In the event a building is erected on more than one single lot, this restriction shall apply to the side lines of the extreme boundary of the multiple lots. In the event of a discrepancy between this Declaration and a recorded plat, this Declaration shall control. However, minimum front setback lines shall be twenty feet (20') to provide staggering of front building lines.

**4. Use Restrictions.** All lots in this subdivision shall be known and designated as residential lots. No business buildings shall be erected on said lots and no business may be conducted on any part thereof. No structure shall be erected, altered, placed or permitted to remain on any residential lot herein, other than one detached single family dwelling, one story or multi-storied, not to exceed thirty-five feet (35') in height.

**5. Lake, Landscaping and Retention Areas.** There may be Blocks of land reciting the acreage therein and containing Common Areas, ponds, landscaped areas and islands in the plats, which Blocks shall be conveyed by the Declarant to an association of property owners within the Development as hereinafter provided for. Such ponds and drainage easements thereto shall become a part of the storm water drainage system of Governors Pointe. No lot owner or other person, firm or corporation shall alter, impair or impede the drainage system and all lot owners shall be subject to regulation by the public authority having jurisdiction and the property owners association as hereinafter set forth.

The Association of owners, as hereinafter described, shall own such Blocks, designated Block areas A and B, and easements for landscaped areas ("LA") and, through its bylaws and regulations,

control the water quality and condition of any pond located on Block A, Landscaped areas ("L.A.") shall be regularly planted and maintained by the Association for the beautification of Governors Pointe and may include masonry piers and wrought iron style or other fencing or walls.

Block A is contemplated as being utilized solely for water retention and landscaping along its boundaries. Wading, swimming, fishing, boating, rafting, floating or ice skating shall be prohibited with "No Trespassing" signs appropriately posted thereon.

6. **Property Owners Association.** A property owners association is or shall be created named Governors Pointe, Inc. (the "Association"), an Indiana nonprofit corporation, prior to the sale of the first lot in Governors Pointe platted addition. Bylaws marked Exhibit B are attached.

7. **Power of Assessment and Collection.** The Association shall have all the powers set forth in its Articles of Incorporation, together with all other powers that belong to it by law, including the power to levy a uniform annual assessment against the lots within the Development as set forth herein and in the bylaws of the Association, attached hereto.

8. **Membership and Voting Rights.** Every owner of a lot 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:

8.1 **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.

8.2 **Class B.** The Class B members shall be the Declarant and 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 one hundred eighteen (118) platted and unplatted lots within the Development and Declarant shall have the automatic right to plat and record, not to contain in excess of one hundred three (103) homes, 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 homeowners; or (2) \_\_\_\_\_ 1st, 2003. 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.



9. **Covenant Accepting Assessments.** Each owner of any lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as provided in the bylaws of the association.

10. **Commencement of Assessments.** The annual assessments shall commence as to all lots with homes thereon on the first day of the month following the initial conveyance of a home on the lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year and thereafter until the board of directors fixes the permanent annual assessment date. The board of directors shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance of each annual assessment period and provide the membership due notice thereof. Annual assessments may be made payable at more frequent periods than one (1) year by resolution of the board of directors of the Association.

11. **Exception to Assessments.** The Declarant, as owner of platted or unplatted lots, shall be exempt from any and all assessments but Declarant shall pay any deficits in usual or ordinary expense until such time as assessments upon lots with homes thereon is sufficient to meet such expense.

12. **Uniform Rates.** Both annual and special assessments shall be fixed at a uniform rate for all lots containing a home.

13. **Right To Increase Annual Assessments.** Because of uncertainties in usual and ordinary common property expenses due to Indiana real property reassessment, costs of energy, insurance, maintenance and landscaping costs or other unforeseeable operating expenses, the board of directors of the association may increase the budgeted initial temporary assessment by a sum not to exceed ten percent (10%) per annum without vote of the membership. However, any such increases shall be documented by normal accounting procedures and distributed to the membership to demonstrate that such increases are attributable to increases in operating expenses and no portion of such increase shall inure to the benefit of the Declarant and the monies received shall be entirely expended on association expense.

The maximum annual assessment per lot may be increased above the maximum percentage set forth above only by a vote of two-thirds (2/3rds) of the Class A members who are voting in person or by proxy, at a meeting duly called for this purpose.

14. **Liens, Charges and Subordination.** Any charge levied or assessed against any lot, together with interest and other charges and costs hereinafter provided, shall become and remain a lien upon that lot until paid in full, subordinate only to the lien of a first mortgage, and shall also be a personal obligation of the owner or owners of the lot at the time the charge fell due. Such charge shall bear interest as a late charge at a rate of two percent (2%) per month until paid in full. If, in the opinion of the board of directors of the Association, such charge has remained due and payable for an unreasonably long period of time, the board may, on behalf of the Association, institute such procedures, either at law or in equity, by foreclosure or otherwise, to collect the amount owing in any court of competent jurisdiction.

The owner of the lot or lots subject to the charge shall, in addition to the amount of the charge at the time legal action is instituted, be obliged to pay the expense or costs, including reasonable attorney's fees, incurred by the Association in collecting same. Every owner of a lot in the subdivision and any person who may acquire any interest in such lot, whether as an owner or otherwise, is hereby notified that by acquisition of such interest such person agrees that any such liens which may exist upon said lot

at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the subdivision is hereby notified that by the act of acquiring such title, such person shall be conclusively held to have covenanted to pay the Association all charges that the Association shall make pursuant to these covenants and restrictions.

The lien of assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. However, a first mortgagee is not, at any time, obligated to perform the duty of collection of assessments.

The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association that the assessments on a specified lot have been paid or that certain assessments against said lot remain unpaid, as the case may be. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. The charges or assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the members of the Association, and for the improvement and maintenance of the properties owned or operated by the Association.

**15. Suspension of Privileges.** Notwithstanding any other provision contained herein or in the bylaws, the board of directors of the Association shall have the right to suspend the voting rights, if any, and the right to use the facilities of the Association of any member or associate member: (I) for any period during which any of the Association's charges owed by the member or associate member remains unpaid; (ii) during the period of any continuing violation of the restrictive covenants for the Development, after the existence of the violation shall have been declared by the board of directors of the Association; and (iii) during the period of any violation of the Articles of Incorporation, bylaws or regulations of the Association.

**16. Mortgagees Rights.** Unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each first mortgage owned) or the Class A members have given their prior written approval, the Association shall not:

16.1 By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Development, common property or improvements located thereon which are owned directly or indirectly by the Association for the benefit of the lots. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Development by the Association shall not be deemed a transfer within the meaning of this clause.

16.2 Change the method of determining the obligations, assessments, dues or other charges which may be levied against a homeowner.

16.3 By act or omission, change, waive or abandon any scheme of regulation or enforcement thereof pertaining to the architectural design or exterior appearance of the homes on lots, the exterior maintenance of the dwellings on lots, the maintenance of common fences or common driveways or the upkeep of lawns and plantings in the Development.

16.4 Fail to maintain fire and extended coverage insurance on insurable common property on current replacement cost basis in an amount not less than one hundred percent of the insurance value (based on current replacement cost).

16.5 Use hazard insurance proceeds for losses to common property for other than the repair, replacement or reconstruction of such improvements.

16.6 Mortgagees, their successors or assigns, shall have the right to examine the books and records of the Association.

16.7 First mortgagees of homes on lots may, jointly or singly, pay the taxes or other charges which are in default and which may or have become a charge against any common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such common property, and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

16.8 No provision of the constituent documents shall give an owner or any other party priority over any rights of first mortgagees of homes within the Development pursuant to their mortgages in the case of a distribution to homeowners of insurance proceeds or condemnation awards for losses to or a taking of common property.

17. **Temporary Structures.** No trailer, shack, tent, boat, basement, garage or other outbuilding may be used at any time as a residence, temporary or permanent, nor may any structure of a temporary character be used as a residence, except that used by Declarant or builder during construction on the property.

18. **Nuisances.** No farm animals, fowls or domestic animals maintained for food or for commercial purposes shall be kept or permitted on any lot or lots in the subdivision. No noxious, unlawful or otherwise offensive activity shall be carried out on any lot in this subdivision, nor shall anything be done thereon which may be or may become an annoyance or nuisance.

19. **Architectural Control.** There shall be created an architectural control committee (the "Committee") initially composed of the Declarant or its designees until ninety percent (90%) of the total lots within Development are developed at which time the Association, from among its members, shall appoint three (3) persons as the Committee. However, the Declarant shall have sole right to approve plans for original construction on any lot and the Committee shall regulate reconstruction, remodeling, additions and other construction or alteration upon the lots.

The Committee shall regulate the external design, appearance, use, location and maintenance of lands subject to these restrictions and improvements thereon, in such a manner as to preserve and enhance values and to maintain a harmonious relationship among structures and the vegetation and topography.

19.1 **Generally.** No dwelling, building structure or improvement of any type or kind shall be constructed or placed on any lot in the subdivision without the prior approval of the Committee. Such approval shall be obtained only after written application has been made to the Committee by the owner or builder for the owner of the lot requesting authorization by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the lot and the location of the improvement proposed to be constructed or placed upon the lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Committee may require. All building plans and drawings required to be submitted to the Committee shall be drawn on a scale of 1/4" = 1" and all plot plans shall be drawn to a scale of 1" = 30', or to such other scale as the Committee shall

require.

19.2 Sight Visibility. Regardless of Committee approval, no fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2') and six (6') feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points twenty-five feet (25') from the intersection of said street lines or, in the case of a rounded property corner, from the intersection of the street lines extended. The same sight line limitations shall apply to any lot within ten feet (10') from intersection of a street line with the edge of a driveway pavement or alley line. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

19.3 Fences, Walls and Screening. It is the goal of the Committee to keep all fencing or screening as harmonious as possible with the architectural character of the Development. Undue obstruction of view of other amenities from adjoining properties will be taken into consideration by the Committee when reviewing fences for approval. Fences shall not be nearer to the front of a home than the rear foundation line of a home except decorative fences. With Committee approval, front fences may be placed parallel to the front foundation of a home only if they do not cause unreasonable visual barriers and they are of identical materials as the main structure.

The Committee will discourage fencing of the entire back yard due to the effect that this fencing may have on the feeling of spaciousness desired by other lot Owners. Approved fencing may be privately installed but must be constructed to professional levels of quality. Fences installed by nonprofessionals will be inspected by the Committee after completion in order to insure that the final product is of a professional quality and final approval of the fence shall be deemed withheld until successful completion of this final review. All fences or screens will be submitted to the Committee for approval.

19.4 Height Restriction. The Declarant is of the opinion that the environmental integrity of the community will be materially lessened if the open nature of the Development is damaged by the proliferation of fences of excessive height.

The Committee, therefore, may approve rear perimeter fences up to four (4) feet in height which otherwise meet these guidelines. The Committee will give consideration to a deviation in their height limit where the rear line of the lot abuts a public roadway or other clearly unique circumstance exists. The use of six foot (6') fences around small patio areas of a backyard of a home in order to secure privacy for the immediate patio area may be permitted. The guidelines for specific fence height restrictions are as follows:

- a) Property fencing and walls shall not exceed four (4') feet above grade unless otherwise approved by the Committee.
- b) The Committee will not ordinarily approve a proposed fence which exceeds four feet (4') in height unless the rear line of that lot abuts a roadway or offers some other circumstances clearly unique to that lot.
- c) Patio screens/privacy fences shall not exceed six feet (6') in height except for pools and other recreational fences as provided herein
- d) There shall be no fencing, walls or other structures erected and maintained in any area designated 100 year floodway upon Federal flood hazard maps and the plats of Governors



Pointe.

**19.5 Power of Disapproval.** The Committee may refuse to grant permission to construct, place or make any requested improvement when:

- a) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these restrictions.
- b) The design or color scheme of a proposed improvement is not in harmony with the general surroundings of the lot or with adjacent buildings or structures.
- c) The proposed improvement or any part thereof would, in the opinion of the Committee, be contrary to the interests, welfare or rights of all or any part of other owners.

**19.6 Duties of Committee.** The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. One copy of the submitted material shall be retained by the Committee, or copies thereof in a reduced form, for its permanent files and the second copy returned to applicant. All notifications to applicants shall be in writing and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval.

**19.7 Liability of Committee.** Neither the Committee, any agent thereof or the Declarant shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, or for any defects in any work done according thereto. Further, the Committee does not make any representation or warranty as to suitability or advisability of design, engineering, method of construction or the materials to be used.

**20. Size of Dwellings, Sideyards, Garages and Paving.** It is agreed that the minimum size home to be built on the property shall be 1200 square feet for one-story dwellings and 800 square feet for two-story dwellings; with minimum lot width and lot area of 60 feet and 7000 square feet, respectively, excepting an average density of three (3) units per acre within the 35 acre boundaries. Minimum aggregate sideyards of ten feet (10') shall be maintained with a minimum four foot (4') sideyard on any one side. It is further agreed that all homes constructed on the property shall have a minimum of a double car attached garage and an asphalt or concrete paved driveway. No carports will be allowed to be constructed on any lot on the property.

**21. Exterior Construction.** Single family detached dwellings and accessory buildings, storage barns and outbuildings shall conform to the following restrictions:

- a) The finished exterior of every building constructed or placed on any lot may be of vinyl siding or trim. Provided, however, before application of material other than brick, stone or wood, all exterior and veneer, plus roof materials, will be submitted and approved by the Architectural Control Committee to assure uniformity of quality, safety, appearance and durability with other dwellings in the subdivision.
- b) No heat pumps, air conditioning units or gas meters will be installed in or on the front of a dwelling.
- c) If storm doors or windows are installed, they must be painted. No unfinished

aluminum windows or doors will be allowed.

- d) All gutters and downspouts other than copper will be painted or coated.
- e) All roof and fireplace flashing other than copper will be painted or coated.
- f) All metal roof or range vents will be painted or coated to blend with roof color. Every effort should be made to locate such vents to the rear of the dwelling.
- g) All basement and crawl space sump pumps must discharge into retention ponds or six inch (6") surface drains must be provided at the rear of each lot or along the curb.
- h) Every effort should be made to locate all plumbing vent stacks to rear of the dwelling.
- i). There shall be no carports erected or maintained upon any lot within the development. Accessory buildings, storage barns or outbuildings shall be a maximum size of 150 sq. ft. and colors of roof shingles and exterior must match those of the dwelling. No metal is allowed in the construction of these accessory buildings and they cannot be located in any drainage, utility or sewer easement. All accessory buildings, storage barns or outbuildings must be approved by the Architectural Control Committee.
- j) Each dwelling shall be constructed with a minimum two-car attached garage with paved driveway.

**22. Driveways and Sidewalks.** All driveways shall be paved simultaneously with construction of the dwellings and the type of construction and materials must first be approved by the Committee.

**23. Mailboxes and Lights.** All mailboxes shall be in accordance with the standards set forth by the Committee and shall be installed by the builder simultaneously with the construction of the dwelling. All homes shall have a garage light on the exterior of the home which will operate by photocell or similar device from dusk to dawn. Entrances to Southport Road shall each be illuminated with one street light installed by Declarant and the maintenance and energy costs shall be the obligation of the Association.

**24. Signs.** Except for marketing and permanent signs that the Declarant may place at the project entrance or entrances, no sign of any kind shall be displayed to the public view on any lot except that one sign of not more than six (6) sq. ft. may be displayed at any time for the purpose of advertising the property for sale or rent, or may be displayed by a builder to advertise the property during construction and sale.

**25. Garbage and Refuse Disposal.** No lot shall be used or maintained as dumping ground for trash. Rubbish, garbage or other waste shall not be kept except in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any lot in public view.

**26. Storage Tanks.** Any gas or oil storage tanks used in connection with a lot shall be either buried or located in a garage or house so that they are completely concealed from view. Underground storage tanks shall conform to Federal, State and local standards of environmental management.

27. **Swimming Pools.** Only permanent in-ground pools with professional construction will be permitted. All backyard pools should be oriented to minimize the potential effect on neighboring lots. All fencing shall conform to state, county and municipal regulations and shall be of harmonious design to the dwelling and adjoining properties. The use of plantings/screenings in the vicinity of the pool will be required to soften the visual and sound effect on adjacent properties.

28. **Enforcement of Restrictions.** In the event there shall be any violation or attempted violation of any of these restrictions, it shall be lawful for the undersigned, the Association, or for any person owning any real property in this subdivision, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such restrictions, and either to prevent him or them from doing so or to recover damages from such violation, but neither the Declarant 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 covenants and restrictions.

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 covenants and restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these covenants and restrictions.

29. **General Provisions.** The foregoing restrictions may be amended at any time by the owners of at least two-thirds of the owners of lots subject to such restrictions subject to mortgagees' rights set forth in paragraphs 14 and 16 above. Provided, however, that until all of the lots are sold in this subdivision by the undersigned, any such amendment of these restrictions shall require prior written approval of the undersigned. Each such amendment must be evidenced by a written instrument, signed and acknowledged by the owner or owners concurring therein, setting forth facts sufficient to indicate compliance with this paragraph and recorded in the Marion County Recorder's Office. U.S. Dept. of Housing and Urban Development and U.S. Veterans Administration ("HUD/VA") approval is required as long as there is a Class B Membership for the annexation of additional properties, dedication of Common Area and amendment of the Declaration.

30. **Effect of Becoming an Owner.** The owners of any lot subject to these covenants and restrictions, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent owner of such lot, shall accept such deed and execute such contract subject to each and every covenants, restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the owner acknowledges the rights and powers of Declarant with respect to these covenants and restrictions; and also for themselves, their heirs, personal representatives, successors and assigns, such owners covenant and agree and consent to and with Declarant and to and with the owners and subsequent owners of each of the lots affected by these covenants and restrictions to keep, observe, comply with and perform such covenants, restrictions and agreements.

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

32. **Severability.** Every one of the covenants and restrictions is hereby declared to be independent of, and severable from, the rest of the covenants and restrictions and of and from every other one of the covenants and restrictions, and of and from every combination of the covenants and restrictions.

Therefore, if any of the covenants or restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the covenants and restrictions.

IN TESTIMONY WHEREOF, witness the signature of Declarant this 1st day of July, 1998.

Bay Communities, LLC,

By Bruce T Sklare  
Bruce T. Sklare, Member


STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MARION     )

Before me, a Notary Public in and for County and State, personally appeared Bruce T. Sklare, known to me to be a Member of **Bay Communities, LLC**, who acknowledged execution of the foregoing Declaration for and on behalf of said Company, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and notarial seal this 1st day of July 1998.

My commission expires:  
4-1-08

Judi A. LeMond  
JUDI A. LEMON, Notary Public  
Residing in MORGAN County, IN

 Prepared by William F. LeMond, IN Atty. No. 8761-49, 107 N. Pennsylvania St., Suite 901, Indianapolis, IN 4204-2409.



## EXHIBIT A

A part of the Southeast Quarter of Section 9, Township 14 North, Range 3 East of the Second Principal Meridian, Marion County, Indiana, more particularly described as follows:

Commencing at the Southeast corner of said Southeast Quarter; thence North 90 degrees 00 minutes 00 seconds West (assumed bearing) along the South line of said Quarter Section 1195.54 feet to the Point of Beginning of the herein described parcel; thence continuing North 90 degrees 00 minutes 00 seconds West along said South line 808.71 feet; thence North 00 degrees 07 minutes 05 seconds East parallel with the West line of said Southeast Quarter 660.00 feet; thence North 90 degrees 00 minutes 00 seconds West parallel with the South line of said Southeast Quarter 660.00 feet to the West line of said Southeast Quarter; thence North 00 degrees 07 minutes 05 seconds East along said West line 678.31 feet to the Northwest corner of the Southwest Quarter of said Southeast Quarter; thence South 89 degrees 54 minutes 14 seconds East along the North line of said Southwest Quarter 1334.89 feet to the Northeast corner of said Southwest Quarter; thence South 78 degrees 23 minutes 22 seconds East 133.81 feet; thence South 00 degrees 00 minutes 00 seconds East 1309.14 feet to the Point of Beginning, containing 35.00 acres, more or less.

Subject to the right-of-way of Southport Road.

Subject to a Utility Easement to Indiana Bell Telephone Company per Instrument No. 74-35721.

Subject to an Easement to Indianapolis Water Company per Instrument No. 86-114274.

Subject to all other easements, restrictions and rights-of-way of record.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
GOVERNORS POINTE

THIS DECLARATION made this 1st day of July, 1998, by Bay Communities, LLC (hereinafter referred to as "Declarant"),

WITNESSETH:

WHEREAS, Declarant is the owner of all of the lands contained in the area shown on Exhibit A, attached hereto and made a part hereof, which lands will be subdivided and known as "Governors Pointe" (hereinafter referred to as the "Development"), and will be more particularly described in the plats thereof to be recorded in the office of the Recorder of Marion County, Indiana; and

WHEREAS, Declarant is about to sell and convey the residential lots situated within the platted areas of the Development and before doing so desires to subject and impose upon all real estate within the platted areas of the Development mutual and beneficial covenants and restrictions and charges under a general plan or scheme of improvement for the benefit and complement of the lots and lands in the Development and future home owners thereof.

NOW, THEREFORE, Declarant hereby declares that all of the platted lots and lands located within the Development as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants and restrictions all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots and lands in the Development, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development as a whole and of each of said lots situated therein. All of the covenants, conditions and restrictions shall run with the land and shall be binding upon Declarant and upon the parties having or acquiring any right, title or interest, legal or equitable, in and to the real property or any part or parts thereof subject to such Restrictions, and shall inure to the benefit of Declarant's successors in title to any real estate in the Development.

1. **Drainage, Sanitary and Utility Easements.** There are strips of ground as shown on the plat marked Drainage, Sanitary and/of Utility Esmt. ("DU&SE") which are hereby reserved for the use of public utilities, including cable TV companies and sanitary sewer, but not including transportation companies, for the installation and maintenance of poles, mains, ducts, drains, lines, cables and wires, subject at all times to the proper authorities and to the easements herein granted and reserved, and such other further public service facilities as the undersigned owner of record may deem necessary along, through, in, over and under the strips of land shown on this plat.

2. **Building and Grounds Maintenance.** The owner or party in possession of each lot in the Development shall conform to the following standards:

- a) Mow the lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds;
- b) Remove all debris or rubbish;

following which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the president or by the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4th) of all of the votes of the Class A memberships.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least ten (10) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, one-tenth (1/10th) the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or represented.

Section 5. Proxies. At all meetings of members, each member entitled to vote may vote in person or by proxy. All proxies shall be signed in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon the presence of the member at a meeting or upon conveyance by the member of his Lot.

## ARTICLE IV

### Board of Directors: Selection; Term of Office

Section 1. Number. The affairs of this Association shall be managed by a Board not to exceed five (5) directors, who are all members of the Association, excepting the initial Board of Directors shall consist of three (3) members.

Section 2. Term of Office. At the time of conversion of the Class B member to a Class A member as defined by the Declaration, the members shall elect one (1) director for a term of one (1) year, one (1) director for a term of (2) years, and one (1) director for a term of three (3) years; and at each annual meeting thereafter the members shall elect one (1) director for a term of three (3) years to replace the director whose term has expired, excepting they may enlarge the Board to five members and prescribe the length of their term.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the consent of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors

## **ARTICLE V**

### **Nomination and Election of Directors**

Section 1. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the not less than the number of vacancies that are to be filled. Such nominations may only be made from among members of the Association.

Section 2. Election. Election to the Board of Directors shall be by written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## **ARTICLE VI**

### **Meetings of Directors**

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two (2) directors, after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the Act of the Board.

## **ARTICLE VII**

### **Powers and Duties of The Board of Directors**

Section 1. Powers. The Board of Directors shall have power to:

a) adopt and publish rules and regulations governing the use of common areas and water retention areas as depicted upon the plats of Governors Pointe.



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

c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

e) employ a manager, independent contractor, or such other employees as they deem necessary, and to prescribe their duties with regard to the maintenance and upkeep of the common areas and water retention ponds.

**Section 2. Duties.** It shall be the duty of the Board of Directors to:

a) cause to be kept a complete record of all its acts concerning corporate affairs and to make available to the members the corporate records within a reasonable time after request is made.

b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

c) as more fully provided in the Declaration, to:

i) fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period;

ii) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

iii) foreclose the lien against any property for which assessments are not paid within sixty (60) days after due date and to bring an action at law against the owner personally obligated to pay the same;

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

e) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.

**ARTICLE VIII**  
**Officers and Their Duties**

**Section 1. Enumeration of Officers.** The officers of this Association shall be a president

and vice president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be appointed annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or be otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The office of president and treasurer may be one person and the office of vice president and secretary/treasurer may be held by one person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

#### PRESIDENT

a) The president shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board are carried out, shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

#### VICE PRESIDENT

b) The vice president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

#### SECRETARY

c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

## TREASURER

d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

## ARTICLE IX Committees

The Board of Directors shall appoint an architectural control committee, as provided in the Declaration, and nominating committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purposes.

## ARTICLE X Books and Records

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

## ARTICLE XI Assessments

As more fully provided in the Declaration, each Class A and Class B 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 within thirty (30) days shall be delinquent. If an assessment is not paid within thirty (30) days after the due date, the assessment shall bear a late charge of two percent (2%) per month and the Association may bring an action at law against the Owner personally obligated to pay the Assessment or foreclose the lien against the Property, interest, costs and reasonable attorney fees of any such action shall be added to the amount of the assessment. No Owner may waive or otherwise escape liability for assessments provided herein by non-use of the common areas, facilities or services of the Association. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them, but the lien of any delinquent assessments shall run with the land.

## ARTICLE XII Amendments

Section 1. These Bylaws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present in person or by proxy. HUD/VA has the

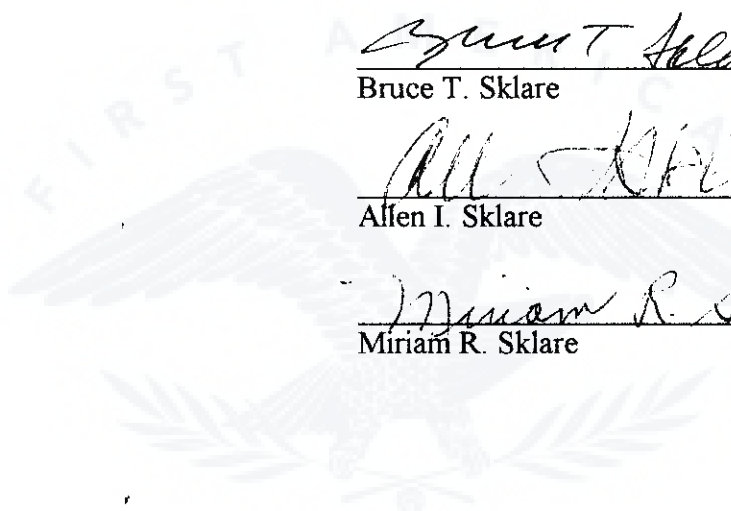
right to veto amendments to the Bylaws while there is Class B membership.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

**ARTICLE XIII**  
**Miscellaneous**

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, we, being all the directors of Governors Pointe, Inc. have hereunto set our hands and seals this 1st day of July, 1998.

  
Bruce T. Sklare  
Bruce T. Sklare

Allen I. Sklare  
Allen I. Sklare

Miriam R. Sklare  
Miriam R. Sklare