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SUBJECT: FOR TRANSFER OF LAND

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
SMITHFIELD**

THIS DECLARATION made this 16 day of August, 1998, by Bay Communities Limited Partnership, an Indiana Limited Partnership (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 all eventually be subdivided and known as "Smithfield" (hereinafter referred to as the "Development"), and will be more particularly described in the plat thereof to be recorded in several sections 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 in Smithfield and before doing so desires to subject and impose upon all real estate within the platted areas of the Development in Smithfield 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 known as Smithfield, and future home owners thereof.

NOW, THEREFORE, Declarant hereby declares that all of the platted lots and lands located within Smithfield, 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 Smithfield, 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 Smithfield

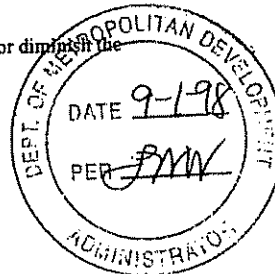
1. **Drainage and Utility Easements** - There are strips and parcels of ground as shown on the plat marked Landscape, Drainage and/or Utility Easement ("L, DU & SE") which are hereby reserved for the use of landscaping, public utilities, including but not limited to drainage structures, swales and improvements, and sanitary sewer, but not including transportation companies, for the installation and maintenance of poles, mains, laterals, ducts, swales, drains, lines, cables, wires, and the like, 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 Declarant or the owner of record after sale, may deem necessary along, through, in, over and under the strips of land shown on this plat. The Declarant, and/or the Property Owner's Association shall have the right to negotiate and grant additional easement rights through and upon said reserved easement areas as are reasonable and necessary to benefit the residents and/or to reasonably resolve disputes involving a lot owner

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;

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CROSS REFERENCE WITH  
PLAT INST # 1998-0151686



- e) Where applicable, prevent debris, foreign material, toxic, hazardous, or damaging materials or substances, from entering drainage areas, swales, and/or storm sewers;
- 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) Comply fully with all provisions of these Covenants, the recorded Zoning Commitments, and the rulings and decisions of the Declarant, the Association, and/or the Architectural Control Committee

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 the improvement(s) 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** - Front building setback lines ("BL") shall be established on the plat. Minimum aggregate side yards will vary within the development as follows: A) All lots with 70 feet or more of lot width at the BL shall provide aggregate side yards of no less than sixteen feet (16'), with a minimum six foot (6') side yard on any one side; B) All lots with 60 feet or more of lot width at the BL, but less than 70 feet of lot width at the BL, shall provide aggregate side yards of no less than twelve feet (12'), with a minimum six foot (6') side yard on any one side; and C) All lots with less than 60 feet of lot width at the BL, shall provide aggregate side yards of no less than ten feet (10'), with a minimum four foot (4") side yard on any one side. In the event a building is erected on more than one single lot, this restriction shall be based on the lot width at the BL of the combined lots, and 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.

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. Without prior approval of the Architectural Control Committee, 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. Plans for each residence must be submitted for review by Declarant, and are subject to Declarant's right to reject or approve same. There shall be no carports. Any accessory building, storage barns or outbuildings shall not exceed a maximum size of 150 square feet, shall utilize a shingled roof to match the roof of the dwelling, shall be painted or stained to match the residence, and the exterior shall not be constructed of metal, tin, aluminum or the like. No structure shall be located in any drainage, sewer, or utility easement, other than a fence which shall be subject to removal, at the Lot Owners expense, in order to access said easement area. There shall be no above ground swimming pools permitted. No antennae shall be permitted other than satellite dish less than two feet (2') in diameter. No unlicensed vehicles, RV's, trailers, boats or trailers may be stored outside. No side gravel drives or gravel parking areas shall be permitted.

5. **Common Area, Lakes, Landscaping and Retention Areas, Street Lights, Pool, Snow Removal** - The Plat indicates Blocks of land and/or areas indicated as Common Areas, some of which contain ponds and landscaped areas, which shall be conveyed by the Declarant to Smithfield, Inc., the entity established as the Property Owners' Association (hereinafter the "Association"), as hereinafter provided. The ponds and drainage easements thereto

shall become a part of the storm water drainage system of Smithfield and shall run to the Department of Capital Asset Management of the City of Indianapolis. 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 by the Association as hereinafter set forth. The retention lakes shall be for drainage purposes; and no wading, swimming, boating, or ice skating therein or thereupon are permitted.

The Association as hereinafter described, shall own such Blocks and/or Common Areas and/or landscaped areas and, through its Bylaws and regulations, control the water quality and condition of any retention pond located thereupon. The landscaping contained upon such Common Areas, and any other improvements, including but not limited to perimeter fencing on said Common Areas, walls, the subdivision signage, and related structures related to the entrances, shall be regularly planted and/or maintained by the Association for the beautification of Smithfield. Mounding and landscaping shall be created and installed by Declarant along Five Points and Combs Roads frontage. The care and maintenance of same shall be the responsibility of the Association.

All "specimen" trees more than six inches (6") in caliper diameter measured thirty inches (30") from ground grade, except in areas of utilities, water retention and grading associated with proper drainage and street installation, shall be preserved to the greatest extent possible. If a specimen tree is removed more than six inches (6") caliper diameter measured thirty inches (30") above ground grade, except as permitted above, it will be the responsibility of the individual lot owner (on whose property the tree had existed), or the Association if the lot owner fails to do so, to replant the tree of a size at least three inch (3") caliper three feet (3') above the ground. If the lot owner was responsible for the removal of a tree resulting in the Association having to replace same, then the cost thereof shall be added to that home owner's next regular assessment collectable in the same manner as provided for collection of assessments in the Bylaws of the Association.

Evergreen trees to be planted by the Declarant or any successor Developer shall be not include any species of White Pine.

After the completion of the proposed Lake which abuts the North line of the properties currently owned by Caylor and Shepherd/Westerhold, and prior to the closing on the sale of any lots identified on the Preliminary Plat as Lots 280-291, a woven-wire type farm fence shall be constructed by the Declarant/developer, on the subdivision property, along both the 655.19 foot long South border of said Lake, and along approximately the North 500 feet (500') of the East border of the Shepherd/Westerhold property, terminating at the South edge of the right-of-way for the stub street to be constructed between Lots 285 and 286 on said Preliminary Plat. The Association shall maintain this fence, and shall have rights to pursue the collection of damages from any third party damaging same.

Any pool or other type of recreational facility or area, which is conveyed to the Association, shall be managed, maintained, and be the full responsibility of the Association, subject to any restrictions imposed by Declarant at the time of transfer.

Decorative street lights shall be installed by the Declarant/developer at the main entrance and street intersections within the subdivision, during the initial development of the subdivision. These lights shall be maintained by the Association, which shall also pay all utility costs related thereto.

The Association shall supplement the municipal snow removal services as necessary, and shall pay all costs related to hiring private contractors as required.

6. **Notification of Ditch Assessment** - Smithfield's storm water drainage system eventually outlets into a legal ditch located in Johnson County, Indiana, identified as Grubbs Ditch. Therefore, each lot in Smithfield will be assessed by the Marion County Treasurer, as a part of the semi-annual billing for real estate taxes, a ditch maintenance fee for the repairs and maintenance of the Grubbs Ditch. The exact procedure for the determination of the amount of the assessment, and the method of collecting same, are subject to the jurisdiction of the Johnson

7. **Property Owners Association** - A property owners association is or shall be created named Smithfield, Inc. (the "Association"), an Indiana nonprofit corporation. prior to the sale of the first lot in Smithfield Bylaws of the Association are attached hereto as Exhibit B, and incorporated herein as necessary, by reference

8. **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 assessments against the lots within the Development as set forth herein and in the Bylaws of the Association

9. **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 un-conveyed, platted or un-platted lot, respectively, as more particularly set forth as follows. The Association shall have two (2) classes of membership:

9.1 **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, 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.

9.2 **Class B**. The Class B members shall be the Declarant, and shall be entitled to three (3) votes for each platted lot owned. Declarant shall have the automatic right to plat, record and sell said 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 homeowners; or 2) January 1, 2008. 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.

10. **Covenant Accepting Assessments** - Each owner of any lot, by acceptance of a deed therefore, 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 imposed by the Association, and 2) special assessments for capital improvements. All such assessments are to be established and collected as provided herein and in the Bylaws of the Association.

11. **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 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.

12. **Exception to Assessments** - The Declarant, as owner of platted or unplatted lots, shall be exempt from any and all assessments; but Declarant shall advance any deficits in usual or ordinary expense until such time as assessments upon lots with homes thereon is sufficient to meet such expense. If the assessments exceed the expenses of the Association prior to the date the Declarant turns over control of the Association to the Homeowner's Board, then the Declarant shall have the right to recover prior advances made by Declarant to cover deficits, so long as a reasonable sum, in the Declarant's sole discretion, is left in the Association's account at the time control is turned over by the Declarant.

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

14. **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

15. **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; and shall be held to have conclusively 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. In addition, 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 of the payment status of the assessments on a specified lot, and/or that certain 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.

16. **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 rules and regulations of the Association.

17. **Mortgages 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:

17.1 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

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

17.3 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

17.4 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 (100%) of the insurance value (based on current replacement cost)

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

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

17.7 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 therefore from the Association.

17.8 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.

18. **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.

19. **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. In Smithfield, every owner or occupant of a dwelling shall be required to fence in or place a leash within the rear yard or keep confined indoors, any dog or domestic animal in their ownership or possession.

20. **Architectural Control** - There shall be created an architectural control committee ("the Committee") initially composed of a Bruce T. Sklare, Miriam R. Sklare, and Allen I. Sklare. At the point in time when 90% of the total lots within Smithfield are developed with homes and owned by homeowners, then the initial committee shall turn over authority to the Association, which shall appoint three (3) persons as the Committee from among its members. However, the Declarant shall retain sole right to approve plans for original construction of a residence on any lot. 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.

20.1 **Generally** - No dwelling, building, fence, structure, addition, remodeling, reconstruction, 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 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. In addition, all applications for approval of an outbuilding shall include a written statement by the Lot Owner that said outbuilding will be maintained to the standards set forth by the Committee.

20.2 **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.

20.3 **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.

Other than the fencing installed by Declarant, fencing which abuts the outside perimeter of the subdivision must be of a uniform style, design, color and height. 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 must be submitted to the Committee for approval.

**20.4 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 feet (4') 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 therein.
- d) There shall be no fencing, walls or other structures erected and maintained in any area designated 100 year flood way upon Federal Flood Hazard Maps and the plats of Smithfield.

**20.5 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 the applicable 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 the other lot owners.

**20.6 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.

**20.7 Liability of Committee** - Neither the Committee, any 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.

**21. Size of Dwellings, Garages and Paving** - It is agreed that the minimum size home to be built on any lot with 70 feet (70') or more of lot width at the BL shall be 1400 square feet of livable space for one-story dwellings and 1700 square feet of livable space for two-story dwellings, with the exception of Lot 118, for which a modification of commitments was granted allowing the two story minimum to be reduced to 1550 square feet. Lots with fifty feet (55') or more of lot width at the BL, but less than seventy feet (70') of lot width at the BL, shall contain homes with livable space of no less than 1200 square feet for a one-story dwelling and 1500 square feet for a two story home. Lots with less than fifty-five feet (55') of lot width at the BL, shall contain homes with livable space of no less than 1200 square feet for a one story home and 1300 square feet for a two story home. It is further agreed that all homes constructed on the property shall have a minimum two car attached garage, at a maximum a three (3) car garage, and an asphalt or concrete paved driveway no less than sixteen (16) feet wide at any point.

**22. Exterior Construction** - Single family detached dwellings, and any additions thereto, shall conform to the following restrictions:

- a) The finished exterior of every building constructed or placed on any lot may utilize vinyl siding or trim. Before application of any exterior material other than brick, stone or wood, all exterior and veneer, including roof materials, will be submitted and approved 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 storm windows are installed, they must be painted. No unfinished windows or doors will be allowed.
- d) All gutters and down-spouts other than copper must be painted or coated.
- e) All roof and fireplace flashing other than copper must 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 alternate drainage plans must be submitted for Declarant's approval prior to construction.
- h) Every effort should be made to locate all plumbing vent stacks to rear of the dwelling, and to paint such stacks to match the roof or siding.
- i) All homes on the perimeter lots which abut either Five Points or Combs Road, must have a minimum of one hundred percent (100%) brick wrap, exclusive of doors, windows, porches, cantilevered areas, and the like, on the entire first floor of the structure.
- j) Any addition or reconstruction of a residence which utilized brick in the initial construction, shall maintain the same percentage of brick on the side of the house facing the street.
- k) Any addition or reconstruction shall comply with the provisions of this Declaration, and all applicable provisions in the Zoning Commitments recorded against the subdivision.

23. **Driveway 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

24. **Mailboxes and Lights** - All mailboxes shall be of uniform design and colors, 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

25. **Signs** - Except for marketing and permanent signs that the Declarant may place at the project entrance or entrances, and signage placed by the builders at the entrance or on the model lots, 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

26. **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

27. **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

28. **Private 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.

29. **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 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.

30. **Additional Acquired Property** - This Declaration shall apply to all sections of Smithfield, as each section is platted including any additional real estate which is added to the development after the date of this Declaration.

31. **General Provisions** - The foregoing restrictions may be amended at any time by the owners of at least two-thirds of the owners of owners of lots subject to such restrictions, subject to those mortgagees' rights set forth in paragraphs 15 and 17 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 Declarant. 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

32. 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.

33. 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 work 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.

34. 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 18 day of August, 1998

Bay Communities Limited Partnership

By Bruce T. Sklare  
Bruce T. Sklare, as Vice President of  
Bay Communities, Inc., the General Partner

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 the Vice President of Bay Communities, Inc., the General Partner of Bay Communities, Limited Partnership, who acknowledged execution of the foregoing Declaration for and on behalf of said Limited Partnership, and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and notarial seal this 18 day of August, 1998

**EXHIBIT A**

## LEGAL DESCRIPTION

## NEW DESCRIPTION SECTION ONE - SMITHFIELD SUBDIVISION

A part of the North Half of the Southeast Quarter of Section 23, Township 14 North, Range 4 East of the Second Principal Meridian in Franklin Township of Marion County, Indiana, being more particularly described as follows:

BEGINNING at the Northeast corner of the North Half of the Southeast Quarter of Section 23, Township 14 North, Range 4 East of the Second Principal Meridian in Franklin Township of Marion County, Indiana, with an (Assumed Bearing of South 00 degrees 04 minutes 25 seconds West along the East line of said Southeast quarter);

thence South 88 degrees 44 minutes 32 seconds West along the North line of said half quarter section 1331.20 feet to a 5/8 inch diameter rebar with a yellow cap stamped "WEIHE ENGR LS 0012" - ("capped rebar"); thence South 88 degrees 41 minutes 20 seconds West 290.00 feet; thence South 01 degrees 18 minutes 40 seconds East 270.99 feet; thence South 07 degrees 48 minutes 28 seconds East 88.38 feet; thence South 37 degrees 20 minutes 45 seconds East 179.15 feet; thence South 75 degrees 42 minutes 49 seconds East 47.43 feet; thence South 19 degrees 23 minutes 59 seconds West 178.56 feet to a non-tangent point on a curve to the left having a radius of 430.00 feet and chord bearing of South 72 degrees 44 minutes 56 seconds East 32.24 feet; thence along said curve to the left 32.25 feet to a non-tangent point; thence leaving said curve South 01 degrees 18 minutes 40 seconds East 157.53 feet to a "capped rebar"; thence South 00 degrees 04 minutes 25 seconds West 485.30 feet to a "capped rebar" on the South line of said North half; thence North 88 degrees 41 minutes 20 seconds East along said South line 655.19 feet to a "capped rebar" at the Northeast corner of real estate as contained in Instrument No. 90-87241 and found in the Office of the Recorder of Marion County, Indiana; thence North 12 degrees 24 minutes 42 seconds East 198.05 feet; thence North 01 degrees 18 minutes 40 seconds West 140.50 feet; thence North 88 degrees 41 minutes 20 seconds East 325.33 feet; thence North 01 degrees 18 minutes 40 seconds West 210.00 feet; thence North 27 degrees 08 minutes 22 seconds East 79.62 feet; thence North 45 degrees 38 minutes 43 seconds East 58.01 feet; thence North 76 degrees 02 minutes 25 seconds East 144.31 feet; thence South 89 degrees 55 minutes 35 seconds East 240.00 feet to a point on the East line of said North half quarter section; thence North 00 degrees 04 minutes 25 seconds East along the East line of said half quarter section 657.05 feet to the POINT OF BEGINNING.

Containing 37.118 acres more or less.

My Commission Expires:

3-9-2001

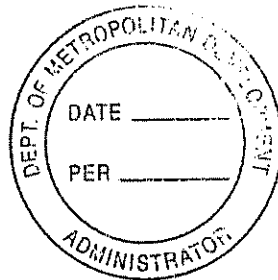
*Don Kunkel*  
Notary Public, Signature

Don Kunkel  
Notary Public, Printed

MARION  
County of Residence

This instrument was prepared by:

David A. Retherford (#6543-49)  
DAVID A. RETHERFORD & ASSOCIATES  
3416 S. Post Road  
P O. Box 39085  
Indianapolis, IN 46239



RETURN TO:

**BAY DEVELOPMENT CORPORATION**

10415 N. College Ave. • Indianapolis, IN 46280  
(317) 844-8844 • FAX (317) 844-7360

BRUCE T. SKLARE

CREATING QUALITY RESIDENTIAL  
COMMUNITIES SINCE 1976

APPROVED THIS 31 ST. ....  
DAY OF AUGUST ..... 1998 ...  
FRANKLIN TOWNSHIP ASSESSOR  
Keith Ann White ... DRAFTSMAN