

X-ref- 96-23986

JOHN B. VON ARX
MARION COUNTY RECORDER
231120 FEB 22 88
ELECTRONIC REGISTRATION
SUBJECT TO PUBLIC ACCEPTANCE
FOR TRANSFER

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
COUNTRY CHARM**

THIS DECLARATION, made on the 2nd day of February, 1996, by **CROSSMANN COMMUNITIES PARTNERSHIP, an Indiana general partnership**, ("Declarant"),

WITNESSETH:

WHEREAS, Declarant is the owner of a part of certain real estate, located in Marion County, Indiana, which is more particularly described in Exhibit "A" (hereafter "Property") attached hereto and by this reference, made a part hereof, upon which Declarant intends to develop a residential subdivision known as Country Charm.

NOW, THEREFORE, Declarant hereby declares that all the Property shall be held, sold and conveyed, subject to the following easements, restrictions, limitations, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and be binding on all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

Name

The subdivision of the Property created by this Declaration shall be known and designated as Country Charm, a subdivision located in Marion County, Indiana.

ARTICLE II

Definitions

The following terms, when used throughout this Declaration, shall have the following meanings and definitions:

Section 2.1 "Declarant" means the **CROSSMANN COMMUNITIES PARTNERSHIP, an Indiana general partnership** and its successors and assigns.

Section 2.2 "Development Period" means the period of time commencing with Declarant's acquisition of the Property and ending when Declarant has completed the development and sale of, and no longer owns, any Lot or any other portion of the Property.

02/22/96 11:14AM JOAN N. ROMERIL MARION CTY RECORDER CJP 32.00 PAGES: 12

Inst # 1996-0023987

Section 2.3 "Dwelling Unit" means any single-family residence situated upon a Lot.

Section 2.4 "Lot" or "Lots" means, as the context requires, any parcel or parcels of land designated as such upon the Plat or, after construction, that parcel of land upon which there is constructed a Dwelling Unit that is conveyed to an Owner by the Declarant. Subject to any necessary approval of the appropriate governmental authority, a "Lot" may contain portions of real estate greater or less than its originally platted dimensions, should the Declarant deem it advisable in order to accommodate the construction of a Dwelling Unit.

Section 2.5 "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but otherwise excluding those having such interest merely as security for the performance of an obligation. Unless specifically indicated to the contrary, the term "Owner" shall include the Declarant.

Section 2.6 "Plat" means the subdivision plat of the Property, which is recorded with the Recorder of Marion County, Indiana, as the same may be hereafter amended or supplemented pursuant to this Declaration.

ARTICLE III

Property Rights, Easements and Encroachments

Section 3.1 General Drainage, Utility, Sewer and Other Development Easement - The following rights reserved in this Section shall not be exercised, after the conveyance of any Lot, in a manner that (i) unreasonably and adversely affects any Dwelling Unit or portion thereof located upon such Lot or the Owner's use or enjoyment thereof, or (ii) unreasonably restricts the rights of ingress and egress to such Lot. The following rights and easements reserved by Declarant in this Section shall run with the land, and Declarant's right to further alter or grant easements shall automatically terminate and pass one (1) year after Declarant shall have conveyed the last Lot within the Property.

(a) Declarant hereby reserves unto itself during the Development Period, and thereafter unto any public or private utility, a general easement ("Drainage, Utility and Sewer Easement") for drainage, utility and sewer purposes in, on and over and any Lot, so as to permit Declarant to properly install and allow to be maintained all electrical, telephone, water, gas, sanitary and storm sewer, television (including but not limited to cable and/or satellite) transmission facilities, security systems and other utility services (including all necessary lines, pipes, wires, cables, ducts, antennae and other equipment and facilities) to serve any Dwelling Unit constructed on the Property. Any Drainage, Utility, Sewer and other Development Easement shall include all areas of the Property outside any Dwelling Units, with the exception of any areas covered by chimneys, or patios. This easement shall be in addition to any easement defined upon a Plat as a drainage, sewer (sanitary or storm), utility, flowage or similar type easement.

(b) Declarant reserves unto itself during the Development Period, a general sign and facilities easement ("Sign and Facilities Easement") to install, erect, construct and maintain an entryway sign or signs, directional signs, advertising signs advertising the Property or the Lots therein, lighting, walkways, pathways, fences, walls and any other landscaping, considered to be necessary, appropriate, useful or convenient, anywhere upon the Property (except upon any Lot after the first conveyance thereof). Any such signs shall comply with any applicable zoning requirements and all such facilities shall be maintained.

(c) Declarant reserves unto itself during the Development Period, the full right, title and authority to:

(i) Relocate, alter or otherwise change the location of any Drainage, Flowage, Utility, Sewer (sanitary or storm) and Lake, Sign and Facilities Easement, or any facility at any time located therein or thereon;

(ii) Grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress and egress, utility and similar purposes on or within any portion of the Property, for the benefit of the Property or any portion thereof, and,

(iii) Describe more specifically or to change the description of any Drainage, Flowage, Utility, Sewer (sanitary or storm), Lake, Sign and Facilities Easement or any other easement, license or right-of-way now or hereafter existing on the Property, by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Marion County, Indiana.

(d) The title of any Owner of any Lot shall be subject to the rights and easements reserved herein.

Section 3.2 Easement for Emergency Purposes. An easement is hereby dedicated and granted for use in the case of an emergency by emergency vehicles such as fire trucks, police cars and ambulances and emergency personnel, public and private.

Section 3.3 Designated Drainage, Utility, and Sewer Easements. There are strips of ground and/or areas designated on the Plat as drainage easements, utility easements, sewer easements, sanitary sewer easements and/or storm sewer easements, or any combination thereof, which are hereby reserved to the appropriate governmental entities, public utilities, and private utilities for the installation and maintenance of swales, ditches, pipes, drains, sanitary sewers, manholes, detention and retention areas or other drainage facilities. Purchasers of Lots in this subdivision shall take title subject to such easements hereby created and subject at all times to the rights of proper authorities to service and maintain such drainage facilities and easements, and no permanent structure of any kind and no part thereof, except fences which do not retard or impede the flow of drainage water and which are approved pursuant to Section 4.2 below, shall be built, erected or maintained on said drainage easements. It shall be the responsibility of the

Owners of the areas enclosed within such easements to maintain such areas in such conditions that the flow of storm drainage waters on, across and from said areas shall not be impeded, diverted or accelerated. Such use for storm water movement or retention or detention is hereby declared to be an easement and servitude upon said land for the benefit of the Owners of other land included within the Plat, upstream or downstream, affected by such use and for any proper governmental agency or department or any private or public utility. All proper governmental agencies or departments and public and private utilities are hereby given the right to obtain access to such areas to perform maintenance and to perform such maintenance as may be necessary to protect that easement and servitude rights. It shall be the responsibility of the Owner of any Lot or parcel of land within the Plat to comply at all times with the provisions of the drainage plan as approved for the applicable Plat by the appropriate governmental agency or department and the requirements of all drainage permits for such Plat issued by those agencies. Failure to so comply shall operate as a waiver and release of the Declarant, the developer, or their engineers and agents from all liability as to damage caused by storm waters or storm drainage.

Further, there are easements and servitudes upon the land within the Plat in favor of surface water runoff along natural valleys and drainage channels running to Owners of other land contained within the Plat, upstream and downstream. It shall be the responsibility of the Owners of these natural valleys and channels to use their land and maintain said natural valleys and channels in such manner and condition that the flow of storm drainage waters on, across, from and to such areas shall not be impeded, diverted or accelerated.

Section 3.4 Street Dedication. All streets now or hereafter located upon the Property are hereby dedicated to the public.

ARTICLE IV

Use, Restrictions, and Architectural Control

Section 4.1 Lot Use and Conveyance. All Lots shall be used exclusively for single family detached residential purposes, except that Declarant, during the Development Period, reserves (a) the rights provided in this Declaration respecting the Property generally, and (b) the right to subdivide, dedicate or otherwise convey or designate all or any portion of any one or more Lots which it may own from time to time for recreational or other common uses and benefit of all Owners. Except as provided in the Declaration, no Lot shall be subdivided to form units of less area. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

Section 4.2 Architectural Control. No building, outbuilding, mailbox, fence, satellite dish, wall or other structure, except original construction of Dwelling Units by or on behalf of the Declarant, shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein, other than by the Declarant, be made until the plans

and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, until the end of the Development Period, and thereafter by an Architectural Committee. The Architectural Committee shall consist of three (3) owners elected annually by a majority owners of the Lots; provided, however, that there shall only be one vote per Lot. The members thereof shall serve for one year, or until they resign or are removed by a majority vote of the Lot owners, whichever occurs first. The first election shall be upon the expiration of the Development Period, and elections shall occur each year thereafter. Any vacancies in the Architectural Committee shall be filled by appointment through nomination by the remaining members.

Section 4.3 Leasing. Any Lot may be leased by its Owner.

Section 4.4 Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Property, on any Lot, or in any Dwelling Unit, except that no more than a total of two (2) dogs, cats, or other normal household pets may be kept in residences, provided that such pets are not kept, bred, or maintained for any commercial purpose.

Section 4.5 Outside Storage. All clotheslines, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept from view of neighboring homes and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. Trash must be stored in enclosed containers.

Section 4.6 Setback Lines. Front Building lines are hereby established as shown on the Plat. Between such Front Building lines and the right-of-way lines there shall be erected, placed or altered no structure or part thereof, except fences in keeping with architectural style as specifically approved by the Declarant until the end of the Development Period, and thereafter by the Architectural Committee; provided, however, except that in no case will such fences be permitted on the public right-of-way. The building lines which are from public right-of-way lines are parallel to and measured perpendicularly from these public right-of-way lines.

Section 4.7 Side Setbacks. The minimum side yard and minimum rear yard requirements shall be those established by the applicable zoning and subdivision control ordinances.

Section 4.8 Temporary Structures and Outbuildings. No structure of a temporary character, tent, shack, basement, garage, barn or other out-building shall be erected, placed, or altered upon any Lot for use as a residence either temporarily or permanently, or at any time be used for such purpose.

Section 4.9 Motor Vehicle Repair. The repair of inoperative motor vehicles or material alteration of motor vehicles shall not be permitted on any Lot unless entirely within a garage permitted to be constructed per the terms of the Declaration.

Section 4.10 Nuisances. No noxious or offensive activities shall be carried on or be permitted to exist on any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance. Any structure or building permitted to be constructed on any Lot by this Declaration, which may be all or in part destroyed by fire, wind, storm or any other reason, shall be rebuilt and restored to its previous condition within a reasonable length of time, and all debris accumulated in connection therewith shall be removed within a reasonable time after any such occurrence.

Section 4.11 Permitted Uses. No use shall be made of any Lot except as permitted by the applicable zoning and subdivision control ordinances under which this Property is developed.

Section 4.12 Drains. No house footing drain or roof water drain shall be discharged into the sanitary sewers.

Section 4.13 Number of Dwelling Units. The number of Dwelling Units shall not exceed the number of Lots within the Property.

Section 4.14 Residential Use. Lots may be used only for residential purposes and only for one single-family dwelling, a private garage, and other such outbuildings as are usual and incidental to the use of a residential lot. All lots in this subdivision shall be designated as residential Lots, and no home shall exceed two and one half (2-1/2) stories or thirty-five (35) feet in height.

Section 4.15 Size. Subject to any further restrictions imposed by any recorded commitment, every single-family dwelling erected, placed, altered or maintained on any Lot within shall have a minimum living area, exclusive of open porches, unfinished basements and attached garages, of not less than what is required by the applicable zoning and subdivision control ordinances.

Section 4.16 Unsightly Growth. In order to maintain the standards of the Property, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Property, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. Failure to comply shall warrant the Declarant to cut weeds or clear the refuse from the Property at the expense of the Owner, and there shall be a lien against said Property for the expense thereof, which lien shall be due and payable immediately. If such lien is not promptly paid, the Declarant may file suit and recover such amount together with reasonable attorneys fees and costs of collection.

Section 4.17 Site Visibility. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet and nine (9) 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 (25) feet 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 sightline limitations shall apply to any Lot within ten (10) feet from the 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. No fences shall be permitted to be constructed between the front set back line and the street curb.

Section 4.18 Semi-tractor trucks, trailers, etc. No semi-tractor trucks, semi-trucks, semi-tractor trailers, boats, campers, mobile homes, disabled vehicles, and/or trailers shall be permitted to park on the Property or a Lot unless fully enclosed in a garage, or unless the same is necessary and incident to the Declarant's or builder's business on the Property.

Section 4.19 Development and Sale Period. Nothing contained in this Article IV shall be construed or interpreted to restrict the activities of Declarant or a Builder in connection with the development of the Property and sale of Lots. During the Development Period, Declarant or a Builder shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Declarant or a Builder, as in the sole opinion of Declarant or a Builder may be reasonably required, or convenient or incidental to, the development of the Property and sale of the Lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices.

Section 4.20 Outside Use of Lots. Except in an individual patio area appurtenant to a Dwelling Unit, no planting or gardening shall be done, and no fences, hedges, walls or other improvements shall be erected or maintained upon the Property except such as installed in accordance with the initial construction of the buildings located thereon or as approved by the Architectural Committee. Above ground swimming pools are prohibited on the Property.

ARTICLE V

Maintenance, Repairs and Replacements

Section 5.1 By Owners. Except as specifically provided in this Declaration, each Owner shall furnish and be responsible for the maintenance of all portions of his Lot. All fixtures and equipment installed within or as part of the Dwelling Unit, commencing at the points where the utility lines, pipes, wires, conduits or systems enter the Lot upon which said Dwelling Unit is located, shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of his Lot and Dwelling Unit which, if neglected, might adversely affect any other Lot or Dwelling Unit. Such maintenance and repairs include, but are not limited to, all exterior surface, siding, roof, gutters, internal water lines, plumbing, electric lines gas lines, appliances, and all other fixtures, equipment and accessories belonging to the Owner and a part of or appurtenant to his Dwelling Unit or Lot.

ARTICLE VI

General Provisions

Section 6.1 Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant or any Owner and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Indiana law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

Section 6.2 Severability and Waiver. Invalidation of any one of the covenants, restrictions or provisions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect. No delay or failure by any person to enforce any of the restrictions or to invoke any available remedy with respect to a violation or violations thereof shall under any circumstances be deemed or held to be a waiver by that person of the right to do so thereafter, or as estoppel of that person to assert any right available to him upon the occurrence, recurrence or continuation of any violation or violations of the restrictions.

Section 6.3 Amendment. During the first-twenty (20) years following its recordation, this Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of Marion County, Indiana, approved and signed by at least ninety percent (90%) of the then Owners, and thereafter by an instrument signed by at least seventy-five percent (75%) of the then Owners. Provided, however, that none of the rights or duties of Declarant reserved or set out hereunder may be amended or changed without Declarant's prior written approval. Except as prohibited below, this Declaration may also be amended by Declarant, if it then has any ownership interest in the Property, at any time within four (4) years after the recordation hereof. Any amendment must be recorded. Neither the Owners or Declarant shall effect any of the following changes without the prior written approval of two-thirds (2/3) of the first mortgagees of the Lots (based upon one (1) vote for each mortgage owned) and two-thirds (2/3) of the Owners of Lots (excluding Declarant or builder):

(a) Change the method of determining the obligations, assessments, dues or other charges that may be levied per the terms hereof;

(b) By act or omission change, waive or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Dwelling Units, on the exterior maintenance of Dwelling Units;

(c) Change the boundaries of any Dwelling Unit, and the Lot upon which the Dwelling Unit is situated, except as provided for in this Declaration;

- (d) Allow for the annexation of additional property;
- (e) Any change in the manner in which Dwelling Units may be leased except as set forth in this Declaration,;
- (f) Any imposition of any restriction on an Owner's right to sell or transfer his or her Dwelling Unit;
- (g) Any action to terminate the legal status of the development after substantial destruction or condemnation occurs;
- (h) Any provision that expressly benefits mortgage holders, insurers or guarantors; or
- (i) Any termination of legal status of the development for reasons other than substantial destruction or condemnation of the Property.

If an addition or amendment is not considered as a material change, such as the correction of a technical error or the clarification of a statement within the Declaration, there shall be an implied approval to be assumed when an eligible mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after proposal is made. The covenants, restrictions and all other provisions of this Declaration shall run with the land and shall be binding upon the Owners and persons owning any portion of the Property and all parties claiming under them for a period of twenty (20) years from the date of recordation, and thereafter shall automatically extend for successive periods of ten (10) years each unless, prior to the expiration of such ten-year period, this Declaration is amended or changed in whole or in part as hereinabove provided.

Section 6.4 HUD Amendment Approval. All other provisions of the Declaration, notwithstanding, the following actions will require the prior approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development:

- (a) Annexation of additional properties; and
- (b) Amendment of the Declaration of Covenants, Conditions and Restrictions.

Section 6.5 Assignment. Declarant may assign or otherwise transfer any and all of its rights as Declarant in whole or in part.

ARTICLE VII

Exempt Real Estate

Section 7.1 Lot 24. The provisions of this Declaration, notwithstanding, the part of the Property to become known as Lot 24 upon the recordation of the Plat shall be exempt from the provisions of this Declaration.

IN WITNESS WHEREOF, CROSSMANN COMMUNITIES PARTNERSHIP, an Indiana general partnership, has caused this Declaration to be executed as of the date first written above.

CROSSMANN COMMUNITIES PARTNERSHIP
an Indiana general partnership

By: TRIMARK DEVELOPMENT, INC.
General Partner

By: [Signature]
John B. Scheumann, President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

John B. Scheumann Before me the undersigned, a Notary Public in and for said County and State, personally appeared Richard H. Gresser and having been duly sworn, acknowledged execution of this Declaration of Covenants, Conditions and Restrictions of Country Charm as Vice-President of Trimark Development, Inc., an Indiana corporation, a general partner of Crossmann Communities Partnership, an Indiana general partnership.

Witness my hand and Notarial Seal this 2nd day of February, 1996.

My Commission Expires:
May 21, 1997

Residing in Hendricks County



[Signature]
Notary Public
Shirley J. White
Printed Name

WAYNE TOWNSHIP
ASSESSOR
PLAT APPROVED
Date: Feb. 9, 1996
By: Mark C. Hill - Draftman
CHARLES R. SPEARS
ASSESSOR



CONSENT

The undersigned, being the owners of the part of the Property to become known as Lot 1, Lot 22, Lot 23 and Lot 24, hereby consent to the terms and provisions of this Declaration and agree that Lot 1, Lot 22 and Lot 23, shall hereafter be in all respects subject thereto.

Robert E. Bradley
Robert Eugene Bradley, a/k/a
Robert E. Bradley

Phyllis C. Bradley
Phyllis C. Bradley

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Robert Eugene Bradley, a/k/a Robert E. Bradley and Phyllis C. Bradley, and having been duly sworn, acknowledged execution of this Consent.

Witness my hand and Notarial Seal this 5th day of February, 1996.

My Commission Expires:
May 21, 1997



Shirley J. White
Notary Public

Residing in Hendricks County

Shirley J. White
Printed Name

Prepared By: Charles D. Frankenberger
NELSON & FRANKENBERGER
3021 East 98th Street
Suite 220
Indianapolis, Indiana 46280
(317) 844-0106

PUZERNMROECCZEMANCIUACOTEDUNT

A PART OF THE NORTHEAST QUARTER OF SECTION 33,
TOWNSHIP 16 NORTH, RANGE 2 EAST, WAYNE TOWNSHIP, MARION
COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS
FOLLOWS:

BEGINNING AT A P.K. NAIL MARKING THE SOUTHEAST
CORNER OF SAID QUARTER SECTION AND THE NORTHEAST
CORNER OF COUNTRY POINTE AS RECORDED BY INSTRUMENT NO.
940020408; THENCE SOUTH 89 DEGREES 38 MINUTES 19 SECONDS
WEST, ALONG THE SOUTH LINE OF SAID QUARTER SECTION, AND
THE NORTH LINE OF SAID COUNTRY POINTE, AND AN EXTENSION
THEREOF 1749.00 FEET, TO A 5/8" REBAR W/CAP; THENCE NORTH 00
DEGREES 00 MINUTES 00 SECONDS EAST, PARALLEL WITH THE
EAST LINE OF SAID QUARTER SECTION, 247.50 FEET 59 TO A 5/8"
REBAR W/CAP; THENCE NORTH 89 DEGREES 38 MINUTES 19
SECONDS EAST, PARALLEL WITH THE SOUTH LINE OF SAID
QUARTER SECTION, 1749.00 FEET TO A 5/8" REBAR W/CAP, AND THE
EAST LINE OF SAID QUARTER SECTION; THENCE SOUTH 00
DEGREES 00 MINUTES 00 SECONDS WEST (ASSUMED BEARING),
ALONG SAID EAST LINE, 247.50 FEET TO THE POINT OF BEGINNING.
CONTAINING 9.94 ACRES, MORE OR LESS, AND SUBJECT TO ALL
LEGAL HIGHWAYS, RIGHTS-OF-WAY AND EASEMENTS OF RECORD.

EXHIBIT "A"