

DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR DEER CROSSING AT GEIST

RECORDING INFORMATION

THIS DECLARATION is made this 26<sup>th</sup> day of August, 2001, by 0117002  
Cross/Cord, LLC, an Indiana limited liability company (hereinafter referred to as the "Developer").

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WHEREAS, the Developer is the owner of the real estate comprising 17.070 acres, more or less, more particularly described in this plat on which this Declaration is printed (hereafter "Real Estate");

WHEREAS, the real estate comprising 68.16 acres, more or less, more completely described in what is attached hereto and incorporated herein by reference as Exhibit "A" shall hereafter be referred to as the "Additional Real Estate";

WHEREAS, Developer desires to subdivide and develop the Real Estate and may in the future desire to subdivide and develop such portions (or all) of the Additional Real Estate as may be made subject to the terms of this Declaration, as hereinafter provided;

WHEREAS, the term "Development" shall hereafter mean and refer to the Real Estate together with such portions of the Additional Real Estate as have from time to time been subjected to and at anytime subject to this Declaration; and

WHEREAS, the Developer is about to sell and convey the residential lots situated within the platted area 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 restrictions, covenants, conditions, and charges (hereinafter referred to as the "Restrictions") under a general plan or scheme of improvement for the benefit and enjoyment of the lots and lands in the Development and the future owners thereof.

NOW, THEREFORE, the Developer 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 Restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of said lots 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 Restrictions shall run with the land and shall be binding upon the Developer 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 the Developer and every one of the Developer's successors in title to any real estate in the Development.

As of the date of execution hereof, the Development consists only of the Real Estate. Developer shall have, and hereby reserves the right, at any time, and from time to time, to add to the Development and subject to this Declaration all or any part of the Additional Real Estate. Any portion of the Additional Real Estate shall be added to the Development, and therefore and thereby becomes a part of the Development and subject in all respects to this Declaration and all rights, obligations, and privileges herein, when Developer places of record with the County in which the Development is located, an instrument so declaring the same to be part of the Development, which supplementary declaration (hereafter "Supplementary Declaration") may be as part of a subdivision plat for any portion of the Additional Real Estate, or by an amendment or supplement to this Declaration. Such Supplementary Declaration may contain modifications hereto and additional terms, conditions, restrictions, maintenance obligations, and assessments as may be necessary to reflect the different character, if any, of the Additional Real Estate.

Upon recording of any such instrument, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Development and the owners of any lots within such real estate shall be deemed for all purposes, to have and be subject to all of the rights, duties, privileges, and obligations of owners of lots within the Development. No single exercise of Developer's right and option to add and expand the Development as to any part or parts of the Additional Real Estate, shall preclude Developer from thereafter from time to time further expanding and adding to the Development to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Developer from time to time as to all or any portions of the Additional Real Estate. Such expansion of the Development is entirely at the discretion of the Developer and nothing contained in this Declaration or otherwise shall require Developer to expand the Development beyond the Real Estate, or to any portions of the Additional Real Estate which Developer may voluntarily and in its sole discretion from time to time subject to this Declaration.

1. There shall be, and there is hereby created and established the "Development Control Committee" (hereinafter referred to as the "Committee") to perform the functions provided to be performed by it hereunder or under the provisions of the within plats of the Development. Three (3) members appointed by the Developer, or their duly authorized successors appointed by the Developer, shall constitute the Committee. In the event of the death or resignation of any member of said Committee, the remaining member or members shall have full authority to approve or disapprove the building plans, specifications and plot plans, or designate a successor with like authority. In the event the remaining members are unable to designate a representative with like authority, then a new member of the Committee shall be elected by a majority vote of the owners of the lots located in Deer Crossing at Geist. When more than one person holds an interest in a lot, the vote for such lot shall be exercised as they among themselves agree, but in no event shall such vote be split into fractional shares nor shall more than one vote be cast with respect to any lot. The Committee shall consist of not more than three (3) people.

The duties and the responsibilities of the Committee are as follows:

A. The Committee shall regulate the external appearances, use, location and maintenance of lands subject to these Restrictions, and improvements thereon, in such a manner as to preserve and enhance values as a single family residential subdivision, to maintain a harmonious relationship among structures and the natural vegetation and topography and to determine compliance with these restrictions.

B. The Committee may establish forms and checklist for the presentation of information, review, and approval of building plans, specifications, plot plans, drainage plans, landscape plans or other pertinent information as it affects the Committee's responsibilities.

C. 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 submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, the Committee shall specify the reason or reasons thereof.

D. Neither the Committee nor any of its members shall be entitled to any compensation for services performed pursuant to this covenant or in performing any of its duties or obligations set forth in this Declaration.

E. Neither the Committee, nor any member thereof, nor any agent thereof, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto. Further, the Committee does not make, and shall not be deemed by virtue of any action of approval or disapproval taken by it to have made any representation or warranty as to the suitability or advisability of the design, the engineering, the method of construction involved, or the materials to be used.

2. No construction shall be commenced nor any building or fence be erected, placed or altered on any lot in the Development until the building plans, specifications, plot plan, drainage plan, and landscape plan, showing the location of all the construction, structures, drives, walks, landscaping, natural preservation areas, and drainage have been approved as to the compatibility

3. No wall, fence, or above two (2) feet front building set-back shall be allowed ex

4. Street lights and installation shall be

5. All lots in the C and no lot within the Development

6. No metal outbuild same design and obtained before any restriction to profi

7. No dwelling hour occupied or used if completed. The by the appropriate

8. Every building w completed within 3 improvements which remain in such state any improvement h demolition shall be

9. All structures o constructed with e any lot.

10. Where vinyl sid of 50% of the iron road, then 50% of then 50% of the m masonry. All corn a colonial, Cape C of vinyl to be see appearance.

11. At least two (2) the home has gar in the front yard.

12. Every house in the same architect

13. All driveways r road to a point of

14. No temporary i kept on any lot in

15. Utility services or adjacent to pub

16. No owner of a refuse, nor shall or on his lot except c

17. Every outdoor r underground or sha the Development or

18. The size, locath Committee and sha and/or standardize

19. There shall be 1 yards shall be appa vinyl clad chain link

20. No above ground

21. No home, upon

22. Street numbers

23. Whenever two (2) such owner shall de apply in writing to f shall be granted, th lot for the purposes remain improved will

24. The owner of o improvements situat thereon from below

A. mow the lot at 1 the unsightly growth

B. remove all debris

C. prevent the exist from or diminish th

D. cut down and re

E. where applicable, create;

F. keep the exterior as to avoid their b

G. within sixty (60) shall installation the



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25. With regard to single-story homes:

A. the minimum square footage of such homes, exclusive of porches and garages, will be 1,500 square feet, except that no more than 40 homes may be constructed between 1,400 and 1,500 square feet, exclusive of porches and garages;

- for such 40 homes, (unless such home is of a log home design) a minimum of 75% of the front elevation shall be brick or masonry;
- however, if one or more of such 40 homes is located on a corner lot, (unless such home is of a Colonial, Cape Code, or log home design) a minimum of 75% of all four (4) elevations shall be brick or masonry;

B. any such homes constructed between 1,400 and 1,500 square feet shall not be located on the perimeter of the Subdivision;

C. the average square footage of all single-story homes in the subdivision will exceed 1,500 square feet.

26. With regard to two-story homes the minimum square footage of such homes, exclusive of porches and garages, will be 1,700 square feet.

27. It shall be the duty of every owner of every lot in the Development on which any part of an open storm drainage ditch or easile is situated to keep such portion thereof as may be situated upon his lot continuously unobstructed and in good repair.

28. Each lot owner and/or builder shall be responsible to prevent erosion and protect the natural environment. This shall be accomplished by designating areas on the landscape plan which are to remain undisturbed and to provide an erosion control plan for any areas which will be disturbed during construction. Said erosion control plan shall be submitted to the Committee for review and approval at such time that plans are submitted to the Committee pursuant to Paragraph 1 hereof.

29. Trees five (5) feet outside of the building, driveway, parking area or other approved construction areas shall not be removed unless the diameter of the tree is less than four (4) inches, the tree is dead, or approval is granted by the Committee.

30. The disposal of water from sump pumps, geothermal water systems, swimming pools, or other forced water discharges shall not be allowed unless approved by the Committee. Under no circumstances shall the above mentioned water sources be allowed to discharge onto adjacent lots except through established drainage easements. Approval by the Committee shall be granted only when adequate measures are submitted to protect the drainage way from erosion or other damaging effects.

31. The drainage plan required to be submitted to the Committee shall show the topography of the lot and the proposed method of drainage to ensure that drainage from the lot will not in any way adversely affect adjacent property owners, rights-of-way, easements, streets, or common property.

32. There will be no parking on the dedicated streets except when a lot Owner has a social function where the invited guests will not be able to park on the Owner's lot. The provision to allow parking for social functions only applies to automobiles and not to any other form of vehicle. Overnight parking is not allowed on any dedicated street.

33. Lots shall be subject to drainage easements, sewer easements, and utility easements, either separately or in combination of the three, as shown on the plat or plate of the Development, which, subject to Indiana Code §38-9-27 et seq., are reserved for the use of the lot owners, public utility companies and governmental agencies as follows:

A. Drainage easements (D.E.) are created to provide paths and courses for area and local storm drainage, either over land or in adequate underground conduit, to serve the needs of the Development and adjoining ground and/or public drainage systems; and it shall be the individual responsibility of the lot owner to maintain the drainage across his own lot. Under no circumstances shall said easement be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict the water flow in any manner. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by the Developer.

B. Sewer easements (S.E.) are created for the use of the local governmental agency or private sanitary sewer provider having jurisdiction over the storm and/or sanitary waste disposal system of said city and/or county designated to serve the Development for the purposes of installation and maintenance of sewers that are a part of said system. Each owner of a lot must connect to a public sanitary sewer and pay all applicable connection charges.

C. Utility easements (U.E.) are created for the use of public utility and cable television companies, not including transportation companies, for the installation of pipes, mains, ducts, and cables as well as for the uses specified in the case of sewer easements.

D. The owners of all lots in the Development shall take title subject to the rights of public or private utilities, governmental agencies, and the rights of the other lot owners in this addition to said easements herein granted for ingress and egress in, along and through the strips of ground for the purposes herein stated.

34. No construction vehicles, shacks or outhouses shall be erected or situated on any lot within the Development, except with the written approval of the Committee and any such structure or equipment shall be promptly removed upon completion of the home.

35. During the construction period, the lot shall be maintained in a clean and orderly manner. Loose shingles, lumber, bricks, block, drywall, insulation, or other building materials shall not be scattered about or around the lot. Materials which can blow into adjacent lots shall be contained. Construction trash shall be removed from the lot once per week by either removing the trash from the lot or disposing of the trash into a dumpster provided by a trash disposal service.

36. The lot owner shall be responsible for removal of dirt, mud, or debris or other foreign material of any kind which may be deposited upon an adjoining street in the Development. If such deposits occur, then the lot owner shall make provisions to remove such deposits within one (1) day or the Committee may remove such deposits and charge the lot owner for such work.

37. All motor vehicles belonging to members of a household shall have permanent off-street parking spaces in garages or on driveways and no disabled vehicle shall be openly stored on any lot. Further, no boat, trailer, camper, all terrain vehicle, motorcycle, snowmobile or motor home of any kind (including, but not limited thereto, house trailers, camper trailers, or boat trailers) shall be kept or parked upon any lot unless kept from view of neighboring residences and streets.

38. No advertising signs advertising the lot or home erected, placed or permitted on any lot or on any portion thereof shall be erected, placed or permitted on any lot or on any portion thereof unless such signs are informational signs of a type not to exceed six (6) feet in height upon the sale of the lot.

39. All clothes lines, or neighboring residences, shall be regularly removed if clothes shall be kept near.

40. No outside toilets shall be located on any lot and then only with the permission of the Committee.

41. No farm animals, except as permitted on any lot of (4) ordinary household.

42. No noxious, unwholesome or offensive odors shall be a nuisance to owners of the Development.

43. No high intensity light fixtures or any fixtures of any kind shall be located on any lot or anywhere on a lot or front yards.

44. If the parties hereto violate any of these or the Committee (as to such property situated in the person or persons in violation, either to prevent violation, or to require shall have the right to.

45. THE DEER CROSSING

A. In general:

(i) There will be created a not-for-profit corporate Homeowners' Association "Association". Every lot owner shall automatically be a member of the Association.

B. Purpose of the Assoc

(i) The general purpose of the Association shall be to promote the best interests of the lot owners and to maintain and improve the facilities, landscape and other amenities of the Development. The Association shall maintain and improve the facilities, landscape and other amenities of the Development. The Association shall maintain and improve the facilities, landscape and other amenities of the Development.

(ii) An additional purpose of the Association shall be to govern the use and maintenance of the facilities, landscape and other amenities of the Development.

(iii) The Association shall be obligated to convey to the lot owners the use and maintenance of the facilities, landscape and other amenities of the Development.

C. Power of Association

(i) The Association shall have the power to sue and be sued, to execute and enforce its covenants, conditions and restrictions, and to enforce the same against any person who may be liable thereunder.

(ii) Every such charge shall be levied before the first day of the month following the month in which the charge is incurred.

(iii) Any charge levied and other charges or costs shall remain a lien upon the property until the charge is paid in full. Such lien shall be enforceable in any court of competent jurisdiction. The Association shall have the right to sue and be sued, to execute and enforce its covenants, conditions and restrictions, and to enforce the same against any person who may be liable thereunder.

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and protect the same from being used for any purpose other than that intended by the parties hereto

her approved less than four (4) inches,

swimming pools, and other structures which may be located on the lot or adjacent to the lot

the drainage from the lot will easements, streets, or

owner has a right of way over the lot. The provision to the contrary is hereby rejected.

all easements, rights of way, and other interests in the Development, and of the lot owners, public

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within any lot or over any such structure

and utility easements shall be maintained and shall be subject to other easements or rights of way for utility service.

for other foreign interests in the Development. If such easements within one (1) day of such work.

no vehicle shall be openly stored on the lot or adjacent to the lot or on any street or driveway.

38. No advertising signs (except one per lot of not more than four (4) square feet, advertising the lot or home thereon for sale), billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any lot, except lots used as a model by an Owner who then owns four (4) or more lots. This restriction shall not preclude the Developer from constructing informational signs at the entrance to the Development regarding the sale of lots and homes, such signs not to exceed sixty-four (64) square feet in size. This exception for the Developer shall expire upon the sale of all lots in the Development.

39. All clothes lines, equipment, garbage cans, or storage piles shall be kept from view of neighboring residences and streets. All rubbish, trash or garbage stored outside any residence shall be regularly removed from the premises and shall not be allowed to accumulate therein. Firewood piles shall be kept neat and unobtrusive.

40. No outside toilets shall be permitted on any lot (except during a period of construction and then only with the consent of the Committee), and no sanitary waste or other wastes shall be permitted to be exposed.

41. No farm animals, fowls or domestic animals for commercial purposes shall be kept or permitted on any lot or lots in this subdivision and in no case shall there be allowed more than four (4) ordinary household pets per lot.

42. No noxious, unlawful, or otherwise offensive activity shall be done thereon which may be or may become an annoyance or nuisance to owners of lots in the Development.

43. No high intensity lighting, outside television, radio, or other antennas or satellite dishes or any visually obtrusive object may be erected by any lot owner on the exterior of a dwelling or anywhere on a lot unless approved by the Committee. No satellite dishes shall be permitted in front yards.

44. If the parties hereto, or any owner, or their heirs or assigns shall violate or attempt to violate any of these covenants, restrictions, provisions or conditions herein, it shall be lawful for the Committee (as to matters for which it has responsibility) or any other person owning any real property situated in the Development to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, restriction, provision or condition, either to prevent him from doing so, or to recover damages or other dues for such violation, or to require the removal of structures erected in violation hereof. The prevailing parties shall have the right to recover reasonable attorney's fees.

45. THE DEER CROSSING AT GEIST PROPERTY OWNER'S ASSOCIATION, INC.

A. In general:

(i) There will be created, under the laws of the State of Indiana, a not-for-profit corporation to be known as the "Deer Crossing at Geist Homeowners' Association, Inc.", hereafter referred to as the "Association". Every owner of a residential lot in the Development shall automatically be a member of the Association upon the purchase of a lot in the Development.

B. Purpose of the Association:

(i) The general purpose of the Association is to provide a means whereby those areas within the Development designated as common areas and all lakes and drainage easements therein, recreational facilities, landscape easements or drainage easements on the plot or plots of the Development as may be conveyed to or controlled by the Association or established by it, may be operated, maintained, repaired and replaced by the Association. Specifically, the Association shall maintain any common area and all lakes and drainage easements therein, recreation facility or structure, street entrance features, street lights, irrigation system or landscaping located within landscape easements or a landscape island located within the right-of-way. The Association may provide snow removal from public streets within the Development should it be deemed necessary or appropriate.

(ii) An additional purpose of the Association is to provide a means for the promulgation and enforcement of rules and regulations necessary to govern the use and enjoyment of such common areas, recreation facilities, landscape easements and such other facilities and structures, within the Development as may be owned or controlled by the Association.

(iii) The Association shall be obligated to maintain all Common areas and all lakes and variable drainage and utility easements located therein. The Declarant shall be obligated to convey to the Association all Common Areas and all lakes and variable drainage and utility easements located in Common Areas.

C. Power of Association to Levy and Collect Charges and Impose Liens.

(i) The Association shall have all of 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 charge or assessment against the lots within the Development. Such charge shall be at least Two Hundred Fifty Dollars (\$250.00) per year for each residential lot in the Development. However, if the Board of Directors of the Association, acting in accordance with the By-Laws of the Association, shall so determine after consideration of the financial requirements of the Association, the annual charge may be greater than Two Hundred Fifty Dollars (\$250.00). No charge shall ever be levied by the Association against the Developer.

(ii) Every such charge shall be paid by the members of the Association before the first day of March of the year for which the charge is made. The Board of Directors of the Association shall fix the amount of the annual charge by the first day of February of each year, and written notice of the charge so fixed shall be sent to each member.

(iii) Any charge levied or assessed against any lot, together with interest and other charges or costs as hereinafter provided, shall become and remain a lien upon that lot until paid in full, and shall also be a personal obligation of the Owner or Owners of that lot at the time the charge fell due. Such charge shall bear interest at the rate of ten percent (10%) per annum 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 any expenses of costs, including attorneys' fees, incurred by the Association in collecting the same. Every Owner of a lot in the Development and any person who may acquire any interest in such lot, whether as an Owner or otherwise, is hereby notified, and by acquisition of such

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interest 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 Development is hereby notified that by the act of acquiring, making such purchase or 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 this subparagraph of the Covenants and Restrictions.

(iv) 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. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

D. Purpose of Assessments.

(i) 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, in particular, for the improvement and maintenance of the properties owned, operated, controlled or maintained by the Association.

E. Suspension of Privileges of Membership.

(i) Notwithstanding any other provision contained herein, 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:

(a) for any period during which any of the Association's charges or any fines assessed under these Covenants and Restrictions owed by the member remains unpaid;

(b) during the period of any continuing violation of these Covenants and Restrictions commencing with notification of the existence of the violation by the Board of Directors of the Association; and/or

(c) during the period of any violation of the Articles of Incorporation, By-Laws or regulations of the Association.

46. These Covenants are to run with the land, and shall be binding on all parties and all persons claiming under them until December 31, 2015, at which time said Covenants shall be automatically extended for successive periods of ten (10) years each, unless by a vote of seventy-five percent (75%) of the then owners of the lots it is agreed to amend said Covenants in whole or in part, provided, however, that no change or termination of said Covenants shall affect any easement hereby created or granted unless all persons entitled to the beneficial use of such easement shall consent thereto.

47. Invalidation of any of the foregoing Covenants, provisions, restrictions or conditions by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

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*Craig J. ...*  
HANCOCK COUNTY RECORDER

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**Cross Reference - Declaration of Covenants and Restrictions of Deer Crossing at Geist printed on the Plat of Deer Crossing at Geist, Section I, which was recorded with the Recorder of Hancock County, Indiana, in Slide 72, Cabinet C, as Instrument Number 0117002.**

FIRST  
ADDITION TO THE DECLARATION OF  
COVENANTS CONDITIONS AND RESTRICTIONS  
OF DEER CROSSING AT GEIST

This First Addition (the "Additional Declaration") to the Declaration of Covenants, Conditions and Restrictions of Deer Crossing at Geist is made and entered into this 28<sup>th</sup> day of June, 2002 by Crossmann Communities Partnership, an Indiana general partnership (hereinafter referred to as the "Developer");

WITNESSETH:

WHEREAS, the Declaration of Covenants, Conditions, and Restrictions of Deer Crossing at Geist (hereafter "Declaration") is printed on the Plat of Deer Crossing at Geist, Section I, which was recorded with the Recorder of Hancock County, Indiana, in Slide 72, Cabinet C, as Instrument #0117002 (the "Section 1 Plat");

WHEREAS, the Declaration applies also to the Plat of Deer Crossing at Geist, Section 2, which was recorded with the Recorder of Hancock County, Indiana, in Slide 86, Cabinet C, as Instrument Number 02-6015 (the "Section 2 Plat");

WHEREAS, the Developer is desirous of supplementing the Declaration by adding to the Declaration the provisions hereafter set forth;

WHEREAS, the Developer is the owner of all lots, common areas, and other land located within the Section 1 Plat and the Section 2 Plat (collectively, the "Real Estate");

WHEREAS, the real estate more completely described by what is attached hereto and incorporated herein by reference as Exhibit "A" shall hereafter be referred to as the "Additional Real Estate";

WHEREAS, the term "Development" shall mean and refer to the Real Estate together with such portions of the Additional Real Estate as have from time to time been subjected to this Additional Declaration.

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*Gregory D. ...*  
HANCOCK COUNTY RECORDER

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NOW, THEREFORE, the Developer 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 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 restrictions shall run with the land and shall be binding upon the Developer 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 the Developer and every one of the Developer's successors in title to any real estate in the Development.

As of the date of execution hereof, the Development consists only of the Real Estate. Developer shall have, and hereby reserves the right, at any time, and from time to time, to add to the Development and subject to this Additional Declaration all or any part of the Additional Real Estate. Any portion of the Additional Real Estate shall be added to the Development, and therefore and thereby becomes a part of the Development and subject in all respects to this Additional Declaration and all rights, obligations, and privileges herein, when Developer places of record with the County in which the Development is located, an instrument so declaring the same to be part of the Development, which supplementary declaration (hereafter "Supplementary Declaration") may be as part of a subdivision plat for any portion of the Additional Real Estate, or by an amendment or supplement to this Additional Declaration. Such Supplementary Declaration may contain modifications hereto and additional terms, conditions, restrictions, maintenance obligations, and assessments as may be necessary to reflect the different character, if any, of the Additional Real Estate. Upon recording of any such instrument, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Development and the owners of any lots within such real estate shall be deemed for all purposes, to have and be subject to all of the rights, duties, privileges, and obligations of owners of lots within the Development. No single exercise of Developer's right and option to add and expand the Development as to any part or parts of the Additional Real Estate, shall preclude Developer from thereafter from time to time further expanding and adding to the Development to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Developer from time to time as to all or any portions of the Additional Real Estate. Such expansion of the Development is entirely at the discretion of the Developer and nothing contained in this Additional Declaration or otherwise shall require Developer to expand the Development beyond the Real Estate, or to any portions of the Additional Real Estate which Developer may voluntarily and in its sole discretion from time to time subject to this Additional Declaration.

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*Barbara*  
HANCOCK COUNTY RECORDER

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ARTICLE I

Supplemental Provisions Pertaining to Technology Infrastructure

Section 1.1. "Community Network" shall mean a system of communication and internet connectivity which may include some or all of the Provider Services, and which is achieved through the Technology Infrastructure.

Section 1.2. "Provider" shall mean and refer to the entity or entities which provides Provider Services.

Section 1.3. "Provider Services" shall mean, without limitation, television, cable, computer connection and/or internet connection by line, wire, cable, fiber optic, main, duct, pipe conduit, pole, antenna, microwave, satellite dish, or wire or wireless technology.

Section 1.4. "Technology Infrastructure" shall mean and refer to technological devices, hardware, co-axial or other cable, optic fibers, software, lines, wire, mains, ducts, pipe conduits, poles, antennas, microwaves, satellite dishes and/or other wired connections and wireless connections.

Section 1.5. Developer's General Network Easement. The following rights and easements reserved and retained in this Section 1.5 shall not be exercised with respect to a lot, after the conveyance of such lot in a manner that (i) unreasonably and absolutely affects any dwelling unit or portion thereof located upon such lot or the owners use or enjoyment thereof or (ii) unreasonably affects the rights of ingress and egress to such lot. The Developer hereby forever reserves, retains, and is granted a blanket, exclusive, perpetual easement over, above, across, under, upon, along, and through the Development and all lots, common areas, and streets located therein (i) for the purpose of owning, installing, maintaining, repairing, replacing, relocating, removing, improving, expanding and otherwise servicing the Community Network and Technology Infrastructure, and any other equipment, facilities, and installations of any type bringing Provider Services to any lot, dwelling unit, and/or any improvements on the common area. This General Network Easement may be conveyed, assigned, and transferred by the Developer, in the Developer's sole discretion, without notice or consent of the association, the owners, or any other person. The General Network Easement is for the exclusive benefit of the Developer, and its successors, designees and assigns, and is an appurtenant easement which runs with the Development and all lots, common areas, and streets therein. Only those Providers which receive the Developer's explicit written permission shall be permitted within the General Network Easement. The Developer's right under this Section 1.5 shall



*Becky Wilcox*  
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survive and exist in perpetuity, and this General Network Easement shall be in addition to any easement identified or designated on a plat.

Section 1.6. Designated Network Easement. Any strips of ground identified on a plat as a Network Easement are hereby forever exclusively for the Developer, and the Developer's successors, designees and assigns, for the purpose of installing, maintaining, repairing, replacing, improving, relocating, expanding, removing or otherwise servicing the Technology Infrastructure and Community Network, and any other equipment, facilities, and installations of any type bringing Provider Services to any lot, dwelling unit, and/or any improvements on the common areas. Notwithstanding anything in the Declaration to the contrary, no planting, hedges, walls, structures, signs, fences, or any other improvements shall be constructed, placed, or erected within such Designated Network Easement, except by Developer or as expressly permitted by Developer in writing. Only those Providers which receive the Developer's explicit written permission shall be permitted within the Designated Network Easement. The Developer's rights under this Section 1.6 shall survive and exist in perpetuity, and may be conveyed, assigned, or transferred by the Developer, in the Developer's sole discretion, without notice to or consent of the association, owners, or any other person.

Section 1.7. Community Network. Developer, in Developer's sole and subjective discretion, may but shall not be obligated to install or cause to be installed within the Development the Community Network and Technology Infrastructure. Notwithstanding the conveyance by Developer of any lot or common area, the Technology Infrastructure, whether located upon, above, under, or within a lot, common area, right of way, or easement shall forever remain the property of and be owned by the Developer or the entity to which the Developer assigns or conveys such ownership.

Section 1.8. Provider. In the event the Developer installs or causes to be installed in the Development the Community Network and Technology Infrastructure, the Developer shall have the sole and exclusive right to select the Provider(s) of the Provider Services. To the extent permitted by law, the Provider(s) selected by the Developer shall be the sole and exclusive provider(s) of the Provider Services, so long as such services are generally available to the owners for subscription. The Association may not contract with others to provide Provider Services within the Development without the prior written consent of the Developer, or Developer's successors or assigns.

Section 1.9. Prohibition Against Further Permits, Licenses, and Easements. The Association and each Owner shall be prohibited from granting permits, licenses, and easements over any lot, common area, or street within the Development for any Technology Infrastructure or Provider Services, or which will impair or limit the Developer's General Network Easement or Designated

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*Concordia*  
HANCOCK COUNTY RECORDER

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Network Easement, absent the explicit written consent of the Developer, which consent may be granted or withheld in Developer's sole discretion.

Section 1.10. Community Advisory Board. In the event the Community Network is installed, the Community Advisory Board ("Advisory Board") will be established by the Developer. The initial Advisory Board will consist of three (3) persons who shall be appointed and replaced by the Developer until such time as the Developer, in writing, turns over to the Association the control of the Advisory Board, at which time the Advisory Board shall be comprised of three (3) Owners appointed by the Board of Directors. The Advisory Board shall act only in an advisory role, and shall consult with the Developer regarding the Community Network, Provider Services and Technology Infrastructure.

Section 1.11. Developer's Rights. The Developer's rights under this Article I shall survive and exist in perpetuity.

## ARTICLE II

### Provisions Pertaining to Common Areas and HUD Requirements

Section 2.1. Owners' Easements of Enjoyment of Common Area. Every lot owner (hereinafter "Owner") shall have a nonexclusive right and easement of enjoyment, in common with all Owners, in and to any common area, which nonexclusive right and easement or enjoyment shall be appurtenant to and shall pass with title to every lot (in the form of a right to membership in the Association), subject to the following provisions:

- a. The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the common area owned by the Association;
- b. The right of the Association to suspend the voting rights and right to use of any recreational facilities, if any, by any Owner (i) for any period during which any assessment remains unpaid and (ii) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- c. The right of the Association to promulgate reasonable rules and regulations governing the use of the common area owned by the Association including, without limitation, parking, swimming, boating, fishing, (including the denial thereof of any such rights) and upon improvements, additions or alterations to the lots and the common area owned by the Association;

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*C. J. Wilson*  
HANCOCK COUNTY RECORDER

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- d. The rights of Developer as provided in this Additional Declaration, as the same may be amended from time to time;
- e. The right of the Association to mortgage any or all of the common area owned by the Association, upon the approval of two-thirds ( $\frac{2}{3}$ ) of the membership of each class of members of the Association;
- f. The easements reserved elsewhere in this Additional Declaration and the right of the Association to grant further reasonable utility easements across and through the common area owned by the Association for the benefit of its members;
- g. The right of the Association to dedicate or transfer all or any part of the common area owned by the Association to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members or otherwise allowed pursuant to this Declaration, as amended. No such dedication or transfer, except as allowed pursuant to this Declaration, shall be effective unless there is recorded an instrument agreeing to such dedication or transfer signed by two-thirds ( $\frac{2}{3}$ ) of the membership of each class of members of the Association;
- h. If ingress or egress to any lot is through the common area, any conveyance or encumbrance of such common area is subject to such lot owner's easement for ingress and egress;
- i. The right of the Developer to erect any signs (i) advertising the sale of any part of the Development or any lot and/or (ii) identifying the Development;
- j. The right of the Developer to install, or cause to be installed, Technology Infrastructure in common areas; and
- k. All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented.

Section 2.2. Delegation of Use. In accordance with the By-Laws and any reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Association, and subject to the rights of others as set forth in this Additional Declaration, any owner may assign his or her right of enjoyment of the common area owned by the Association, to family members, guests, tenants or contract purchasers who reside on the lot.

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*Richard J. Thayer*  
HANCOCK COUNTY RECORDER

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Section 2.3. Subordination of the Lien to Mortgages: Sale or Transfer. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any lot pursuant to the foreclosure of any first mortgage on such lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to this Additional Declaration, as to whether or not such assessments have been paid.

Section 2.4. Right of First Refusal. The Association DOES NOT have the "right of first refusal" to purchase any dwelling unit. Any right of "right of first refusal" subsequently granted to the Association through amendment of the Additional Declaration, Association articles, Association by-laws or any other document governing the development and administration of the Development must receive the prior written approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development. Any "right of first refusal" subsequently added in the Declaration, Association articles, Association by-laws or any other document governing the development and administration of the Development must not impair the rights of a first mortgagee to:

- (a) Foreclose or take title to a dwelling unit, and the lot upon which the dwelling unit is situated, pursuant to the remedies in the mortgage;
- (b) Accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or
- (c) Sell or lease a unit acquired by the mortgagee.

Section 2.5. Amendment. The Declaration and this Additional Declaration and the covenants, conditions and restrictions set forth in them, as from time to time amended in the manner hereafter set forth, shall run with the land and shall be binding upon the persons owning any portion of the Development and all parties closing under them. The Declaration and this Additional Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of the County in which the Development is located, approved and signed by at least seventy-five percent (75%) of the then Owners, including Developer; provided, however, that none of the easements, rights, or duties of Developer reserved or set out hereunder may be amended or

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changed without Developer's prior written approval. Any amendment must be recorded. Neither the Association, the owners or Developer shall effect any of the following changes without the prior written approval of two-thirds (2/3) of the owners of lots (excluding Developer or Builder):

- (a) By act or omission seek to abandon, partition, subdivide, encumber, dedicate, sell or transfer the common area owned directly or indirectly by the Association for the benefit of the owners of the dwelling units. The granting of easements for public utilities or other public purposes consistent with the intended use of the common area owned by the Association by the dwelling unit owners is not a transfer in the meaning of this clause;
- (b) Fail to maintain fire and extended coverage on insurable common area owned by the Association on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement costs);
- (c) Use hazard insurance proceeds for losses to any common area owned by the Association for other than the repair, replacement, or reconstruction of the common area owned by the Association.

The foregoing notwithstanding, Developer reserves the right and power, and each Owner by acceptance of a deed to a lot is deemed to and does give and grant to Developer a power of attorney, which right and power is coupled with an interest and runs with the title to a lot and is irrevocable (except by Developer), without the consent, approval or signature of each Owner, to (i) amend the Association organizational documents, to the extent necessary to conform to the requirements then governing the purchases or insurance of mortgages by the Association, Federal National Mortgages Association, Governmental National Mortgages Association, Federal Home Loan Mortgage Corporation, Mortgage Guaranty Insurance Corporation, Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, or any other similar agency or organization, and (ii) to correct typographical errors, surveyor errors in descriptions or otherwise or obvious factual errors the correction of which would not impair the interest of any Owner or mortgagee. Each deed, mortgage, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and consent to the reservation of the power of Developer to vote in favor of, make, execute and record any of the foregoing amendments.

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*Carlyne J. Jones*  
HANCOCK COUNTY RECORDER

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ARTICLE III

Miscellaneous

Section 3.1 Severability and Waiver. The Declaration and this Additional Declaration shall be enforceable to the fullest extent permitted at law or in equity. Invalidation of any one of the covenants, restrictions or provisions contained in the Declaration and this Additional 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 3.2. Assignment. Developer may at any time assign some or all of its rights and obligations under the Declaration and/or this Additional Declaration. Such assignment shall be effective after it is executed and recorded by Developer with the Recorder of the County in which the Development is located. After such assignment is recorded with the Recorder of the County in which the Development is located, Developer shall have no further obligations or liabilities under the Declaration and/or this Additional Declaration with respect to the rights or obligations assigned.

Section 3.3. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Developer, the Association 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 3.4. Amended Declaration. All provisions in this Additional Declaration shall be and hereby are added to the Declaration and the Declaration, as supplemented by this Additional Declaration, shall remain in full force and effect.

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*Walter Wilson*  
HANCOCK COUNTY RECORDER

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Dated this 28<sup>th</sup> day of JUNE, 2002.

CROSSMANN COMMUNITIES PARTNERSHIP,  
an Indiana general partnership

By: BEAZER HOMES INVESTMENT CORP.,  
A Delaware corporation, Member

By: *Steven M. Dunn*  
Steven M. Dunn, Senior Regional President,  
Mid West Region

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared *Steven M. Dunn*, Senior Regional President, Mid West Region, of Beazer Homes Investment Corp., a Delaware corporation, a Member of Crossmann Communities Partnership, an Indiana general partnership, and having been duly sworn, acknowledged execution of this Additional Declaration.

Witness my hand and Notarial Seal this 28<sup>th</sup> day of June, 2002.

My Commission Expires:  
May 21, 2009



*Shirley J. White*  
Notary Public

Residing in Madison County

Shirley J. White  
Printed Name

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

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EXHIBIT "A"  
ADDITIONAL REAL ESTATE

Part of the Northwest Quarter and part of the Northeast Quarter of Section 23, Township 17 North, Range 5 East in Vernon Township, Hancock County, Indiana, being more particularly described as follows:

Beginning at the Northwest corner of the said Northeast Quarter Section; thence North 88 degrees 54 minutes 23 seconds East (assumed bearing) along the North line of said Quarter Section 577.30 feet; thence South 00 degrees 14 minutes 21 seconds East parallel with the East line of the Northwest Quarter of said Quarter Section 1314.27 feet to a point on the South line thereof; thence South 88 degrees 52 minutes 41 seconds West along said South line 578.95 feet to the Southwest corner of said Quarter Section; thence South 00 degrees 15 minutes 17 seconds East along the East line of the Northwest Quarter Section 1314.55 feet to the Southeast corner thereof; thence South 88 degrees 50 minutes 59 seconds West along the South line of said Quarter Section 1333.90 feet to the Southwest corner of the East Half of said Quarter Section; thence North 00 degrees 15 minutes 09 seconds West along the West line of the said Half Quarter Section 669.86 feet; thence South 88 degrees 50 minutes 59 seconds West parallel with the North line of the said Northwest Quarter Section 1333.87 feet to a point on the West line of said Quarter Section; thence North 00 degrees 15 minutes 09 seconds West along said West line 326.50 feet; thence North 88 degrees 50 minutes 59 seconds East parallel with the aforesaid North line 1333.85 feet to a point on the aforesaid West line of the said East Half Quarter Section; thence North 00 degrees 15 minutes 09 seconds West along said West line 128.98 feet; thence North 88 degrees 50 minutes 59 seconds East parallel with the aforesaid North line 573.85 feet; thence North 00 degrees 15 minutes 09 seconds West parallel with the aforesaid West line 1618.65 feet to a point on the aforesaid North line; thence North 88 degrees 50 minutes 59 seconds East along said North line 780.74 feet to the place of beginning, containing 87.905 acres, more or less. Subject to all legal highways, rights-of-way, easements and restrictions of record.

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HANCOCK COUNTY RECORDER

*Leidy & Jones*





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*Carol J. ...*  
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**Cross Reference - Declaration of Covenants and Restrictions of Deer Crossing at Geist printed on the Plat of Deer Crossing at Geist, Section I, which was recorded with the Recorder of Hancock County, Indiana, in Slide 72, Cabinet C, as Instrument Number 0117002.**

FIRST  
ADDITION TO THE DECLARATION OF  
COVENANTS CONDITIONS AND RESTRICTIONS  
OF DEER CROSSING AT GEIST

This First Addition (the "Additional Declaration") to the Declaration of Covenants, Conditions and Restrictions of Deer Crossing at Geist is made and entered into this 28<sup>th</sup> day of JUNE, 2002 by Crossmann Communities Partnership, an Indiana general partnership (hereinafter referred to as the "Developer");

WITNESSETH:

WHEREAS, the Declaration of Covenants, Conditions, and Restrictions of Deer Crossing at Geist (hereafter "Declaration") is printed on the Plat of Deer Crossing at Geist, Section I, which was recorded with the Recorder of Hancock County, Indiana, in Slide 72, Cabinet C, as Instrument #0117002 (the "Section 1 Plat");

WHEREAS, the Declaration applies also to the Plat of Deer Crossing at Geist, Section 2, which was recorded with the Recorder of Hancock County, Indiana, in Slide 86, Cabinet C, as Instrument Number 02-6015 (the "Section 2 Plat");

WHEREAS, the Developer is desirous of supplementing the Declaration by adding to the Declaration the provisions hereafter set forth;

WHEREAS, the Developer is the owner of all lots, common areas, and other land located within the Section 1 Plat and the Section 2 Plat (collectively, the "Real Estate");

WHEREAS, the real estate more completely described by what is attached hereto and incorporated herein by reference as Exhibit "A" shall hereafter be referred to as the "Additional Real Estate";

WHEREAS, the term "Development" shall mean and refer to the Real Estate together with such portions of the Additional Real Estate as have from time to time been subjected to this Additional Declaration.

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NOW, THEREFORE, the Developer 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 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 restrictions shall run with the land and shall be binding upon the Developer 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 the Developer and every one of the Developer's successors in title to any real estate in the Development.

As of the date of execution hereof, the Development consists only of the Real Estate. Developer shall have, and hereby reserves the right, at any time, and from time to time, to add to the Development and subject to this Additional Declaration all or any part of the Additional Real Estate. Any portion of the Additional Real Estate shall be added to the Development, and therefore and thereby becomes a part of the Development and subject in all respects to this Additional Declaration and all rights, obligations, and privileges herein, when Developer places of record with the County in which the Development is located, an instrument so declaring the same to be part of the Development, which supplementary declaration (hereafter "Supplementary Declaration") may be as part of a subdivision plat for any portion of the Additional Real Estate, or by an amendment or supplement to this Additional Declaration. Such Supplementary Declaration may contain modifications hereto and additional terms, conditions, restrictions, maintenance obligations, and assessments as may be necessary to reflect the different character, if any, of the Additional Real Estate. Upon recording of any such instrument, the real estate described therein shall, for all purposes, thereafter be deemed a part of the Development and the owners of any lots within such real estate shall be deemed for all purposes, to have and be subject to all of the rights, duties, privileges, and obligations of owners of lots within the Development. No single exercise of Developer's right and option to add and expand the Development as to any part or parts of the Additional Real Estate, shall preclude Developer from thereafter from time to time further expanding and adding to the Development to include other portions of the Additional Real Estate, and such right and option of expansion may be exercised by Developer from time to time as to all or any portions of the Additional Real Estate. Such expansion of the Development is entirely at the discretion of the Developer and nothing contained in this Additional Declaration or otherwise shall require Developer to expand the Development beyond the Real Estate, or to any portions of the Additional Real Estate which Developer may voluntarily and in its sole discretion from time to time subject to this Additional Declaration.

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ARTICLE I

Supplemental Provisions Pertaining to Technology Infrastructure

Section 1.1. "Community Network" shall mean a system of communication and internet connectivity which may include some or all of the Provider Services, and which is achieved through the Technology Infrastructure.

Section 1.2. "Provider" shall mean and refer to the entity or entities which provides Provider Services.

Section 1.3. "Provider Services" shall mean, without limitation, television, cable, computer connection and/or internet connection by line, wire, cable, fiber optic, main, duct, pipe conduit, pole, antenna, microwave, satellite dish, or wire or wireless technology.

Section 1.4. "Technology Infrastructure" shall mean and refer to technological devices, hardware, co-axial or other cable, optic fibers, software, lines, wire, mains, ducts, pipe conduits, poles, antennas, microwaves, satellite dishes and/or other wired connections and wireless connections.

Section 1.5. Developer's General Network Easement. The following rights and easements reserved and retained in this Section 1.5 shall not be exercised with respect to a lot, after the conveyance of such lot in a manner that (i) unreasonably and absolutely affects any dwelling unit or portion thereof located upon such lot or the owners use or enjoyment thereof or (ii) unreasonably affects the rights of ingress and egress to such lot. The Developer hereby forever reserves, retains, and is granted a blanket, exclusive, perpetual easement over, above, across, under, upon, along, and through the Development and all lots, common areas, and streets located therein (i) for the purpose of owning, installing, maintaining, repairing, replacing, relocating, removing, improving, expanding and otherwise servicing the Community Network and Technology Infrastructure, and any other equipment, facilities, and installations of any type bringing Provider Services to any lot, dwelling unit, and/or any improvements on the common area. This General Network Easement may be conveyed, assigned, and transferred by the Developer, in the Developer's sole discretion, without notice or consent of the association, the owners, or any other person. The General Network Easement is for the exclusive benefit of the Developer, and its successors, designees and assigns, and is an appurtenant easement which runs with the Development and all lots, common areas, and streets therein. Only those Providers which receive the Developer's explicit written permission shall be permitted within the General Network Easement. The Developer's right under this Section 1.5 shall

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survive and exist in perpetuity, and this General Network Easement shall be in addition to any easement identified or designated on a plat.

Section 1.6. Designated Network Easement. Any strips of ground identified on a plat as a Network Easement are hereby forever exclusively for the Developer, and the Developer's successors, designees and assigns, for the purpose of installing, maintaining, repairing, replacing, improving, relocating, expanding, removing or otherwise servicing the Technology Infrastructure and Community Network, and any other equipment, facilities, and installations of any type bringing Provider Services to any lot, dwelling unit, and/or any improvements on the common areas. Notwithstanding anything in the Declaration to the contrary, no planting, hedges, walls, structures, signs, fences, or any other improvements shall be constructed, placed, or erected within such Designated Network Easement, except by Developer or as expressly permitted by Developer in writing. Only those Providers which receive the Developer's explicit written permission shall be permitted within the Designated Network Easement. The Developer's rights under this Section 1.6 shall survive and exist in perpetuity, and may be conveyed, assigned, or transferred by the Developer, in the Developer's sole discretion, without notice to or consent of the association, owners, or any other person.

Section 1.7. Community Network. Developer, in Developer's sole and subjective discretion, may but shall not be obligated to install or cause to be installed within the Development the Community Network and Technology Infrastructure. Notwithstanding the conveyance by Developer of any lot or common area, the Technology Infrastructure, whether located upon, above, under, or within a lot, common area, right of way, or easement shall forever remain the property of and be owned by the Developer or the entity to which the Developer assigns or conveys such ownership.

Section 1.8. Provider. In the event the Developer installs or causes to be installed in the Development the Community Network and Technology Infrastructure, the Developer shall have the sole and exclusive right to select the Provider(s) of the Provider Services. To the extent permitted by law, the Provider(s) selected by the Developer shall be the sole and exclusive provider(s) of the Provider Services, so long as such services are generally available to the owners for subscription. The Association may not contract with others to provide Provider Services within the Development without the prior written consent of the Developer, or Developer's successors or assigns.

Section 1.9. Prohibition Against Further Permits, Licenses, and Easements. The Association and each Owner shall be prohibited from granting permits, licenses, and easements over any lot, common area, or street within the Development for any Technology Infrastructure or Provider Services, or which will impair or limit the Developer's General Network Easement or Designated

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Network Easement, absent the explicit written consent of the Developer, which consent may be granted or withheld in Developer's sole discretion.

Section 1.10. Community Advisory Board. In the event the Community Network is installed, the Community Advisory Board ("Advisory Board") will be established by the Developer. The initial Advisory Board will consist of three (3) persons who shall be appointed and replaced by the Developer until such time as the Developer, in writing, turns over to the Association the control of the Advisory Board, at which time the Advisory Board shall be comprised of three (3) Owners appointed by the Board of Directors. The Advisory Board shall act only in an advisory role, and shall consult with the Developer regarding the Community Network, Provider Services and Technology Infrastructure.

Section 1.11. Developer's Rights. The Developer's rights under this Article I shall survive and exist in perpetuity.

## ARTICLE II

### Provisions Pertaining to Common Areas and HUD Requirements

Section 2.1. Owners' Easements of Enjoyment of Common Area. Every lot owner (hereinafter "Owner") shall have a nonexclusive right and easement of enjoyment, in common with all Owners, in and to any common area, which nonexclusive right and easement or enjoyment shall be appurtenant to and shall pass with title to every lot (in the form of a right to membership in the Association), subject to the following provisions:

- a. The right of the Association to charge reasonable admission and other fees for the use of recreational facilities, if any, situated upon the common area owned by the Association;
- b. The right of the Association to suspend the voting rights and right to use of any recreational facilities, if any, by any Owner (i) for any period during which any assessment remains unpaid and (ii) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- c. The right of the Association to promulgate reasonable rules and regulations governing the use of the common area owned by the Association including, without limitation, parking, swimming, boating, fishing, (including the denial thereof of any such rights) and upon improvements, additions or alterations to the lots and the common area owned by the Association;

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- d. The rights of Developer as provided in this Additional Declaration, as the same may be amended from time to time;
- e. The right of the Association to mortgage any or all of the common area owned by the Association, upon the approval of two-thirds (2/3) of the membership of each class of members of the Association;
- f. The easements reserved elsewhere in this Additional Declaration and the right of the Association to grant further reasonable utility easements across and through the common area owned by the Association for the benefit of its members;
- g. The right of the Association to dedicate or transfer all or any part of the common area owned by the Association to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members or otherwise allowed pursuant to this Declaration, as amended. No such dedication or transfer, except as allowed pursuant to this Declaration, shall be effective unless there is recorded an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of the membership of each class of members of the Association;
- h. If ingress or egress to any lot is through the common area, any conveyance or encumbrance of such common area is subject to such lot owner's easement for ingress and egress;
- i. The right of the Developer to erect any signs (i) advertising the sale of any part of the Development or any lot and/or (ii) identifying the Development;
- j. The right of the Developer to install, or cause to be installed, Technology Infrastructure in common areas; and
- k. All other rights, obligations and duties as set forth in this Declaration, as the same may be from time to time amended or supplemented.

**Section 2.2. Delegation of Use.** In accordance with the By-Laws and any reasonable and nondiscriminatory rules and regulations promulgated from time to time by the Association, and subject to the rights of others as set forth in this Additional Declaration, any owner may assign his or her right of enjoyment of the common area owned by the Association, to family members, guests, tenants or contract purchasers who reside on the lot.

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Section 2.3. Subordination of the Lien to Mortgages: Sale or Transfer. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any lot pursuant to the foreclosure of any first mortgage on such lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer. No sale or transfer of any lot (whether voluntary or pursuant to foreclosure or otherwise) shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof; and, except as hereinabove provided, the sale or transfer of any lot shall not affect the lien of assessments becoming due prior to the date of such sale or transfer except to the extent that a purchaser may be protected against the lien for prior assessments by a binding certificate from the Association, issued pursuant to this Additional Declaration, as to whether or not such assessments have been paid.

Section 2.4. Right of First Refusal. The Association DOES NOT have the "right of first refusal" to purchase any dwelling unit. Any right of "right of first refusal" subsequently granted to the Association through amendment of the Additional Declaration, Association articles, Association by-laws or any other document governing the development and administration of the Development must receive the prior written approval of the Federal Housing Administration or Secretary of the Department of Housing and Urban Development. Any "right of first refusal" subsequently added in the Declaration, Association articles, Association by-laws or any other document governing the development and administration of the Development must not impair the rights of a first mortgagee to:

- (a) Foreclose or take title to a dwelling unit, and the lot upon which the dwelling unit is situated, pursuant to the remedies in the mortgage;
- (b) Accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; or
- (c) Sell or lease a unit acquired by the mortgagee.

Section 2.5. Amendment. The Declaration and this Additional Declaration and the covenants, conditions and restrictions set forth in them, as from time to time amended in the manner hereafter set forth, shall run with the land and shall be binding upon the persons owning any portion of the Development and all parties closing under them. The Declaration and this Additional Declaration may be amended or modified at any time by an instrument recorded in the Office of the Recorder of the County in which the Development is located, approved and signed by at least seventy-five percent (75%) of the then Owners, including Developer; provided, however, that none of the easements, rights, or duties of Developer reserved or set out hereunder may be amended or

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changed without Developer's prior written approval. Any amendment must be recorded. Neither the Association, the owners or Developer shall effect any of the following changes without the prior written approval of two-thirds (2/3) of the owners of lots (excluding Developer or Builder):

- (a) By act or omission seek to abandon, partition, subdivide, encumber, dedicate, sell or transfer the common area owned directly or indirectly by the Association for the benefit of the owners of the dwelling units. The granting of easements for public utilities or other public purposes consistent with the intended use of the common area owned by the Association by the dwelling unit owners is not a transfer in the meaning of this clause;
- (b) Fail to maintain fire and extended coverage on insurable common area owned by the Association on a current replacement cost basis in an amount at least one hundred percent (100%) of the insurable value (based on current replacement costs);
- (c) Use hazard insurance proceeds for losses to any common area owned by the Association for other than the repair, replacement, or reconstruction of the common area owned by the Association.

The foregoing notwithstanding, Developer reserves the right and power, and each Owner by acceptance of a deed to a lot is deemed to and does give and grant to Developer a power of attorney, which right and power is coupled with an interest and runs with the title to a lot and is irrevocable (except by Developer), without the consent, approval or signature of each Owner, to (i) amend the Association organizational documents, to the extent necessary to conform to the requirements then governing the purchases or insurance of mortgages by the Association, Federal National Mortgages Association, Governmental National Mortgages Association, Federal Home Loan Mortgage Corporation, Mortgage Guaranty Insurance Corporation, Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, or any other similar agency or organization, and (ii) to correct typographical errors, surveyor errors in descriptions or otherwise or obvious factual errors the correction of which would not impair the interest of any Owner or mortgagee. Each deed, mortgage, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and consent to the reservation of the power of Developer to vote in favor of, make, execute and record any of the foregoing amendments.



*Carolyn J. Hesse*  
HANCOCK COUNTY RECORDER

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ARTICLE III

Miscellaneous

Section 3.1 Severability and Waiver. The Declaration and this Additional Declaration shall be enforceable to the fullest extent permitted at law or in equity. Invalidation of any one of the covenants, restrictions or provisions contained in the Declaration and this Additional 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 3.2. Assignment. Developer may at any time assign some or all of its rights and obligations under the Declaration and/or this Additional Declaration. Such assignment shall be effective after it is executed and recorded by Developer with the Recorder of the County in which the Development is located. After such assignment is recorded with the Recorder of the County in which the Development is located, Developer shall have no further obligations or liabilities under the Declaration and/or this Additional Declaration with respect to the rights or obligations assigned.

Section 3.3. Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Developer, the Association 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 3.4. Amended Declaration. All provisions in this Additional Declaration shall be and hereby are added to the Declaration and the Declaration, as supplemented by this Additional Declaration, shall remain in full force and effect.

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Dated this 28<sup>th</sup> day of JUNE, 2002.

CROSSMANN COMMUNITIES PARTNERSHIP,  
an Indiana general partnership

By: BEAZER HOMES INVESTMENT CORP.,  
A Delaware corporation, Member

By: *[Signature]*  
Steven M. Dunn, Senior Regional President,  
Mid West Region

STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MARION    )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared *Steven M. Dunn*, Senior Regional President, Mid West Region, of Beazer Homes Investment Corp., a Delaware corporation, a Member of Crossmann Communities Partnership, an Indiana general partnership, and having been duly sworn, acknowledged execution of this Additional Declaration.

Witness my hand and Notarial Seal this 28<sup>th</sup> day of June, 2002.

My Commission Expires:  
May 21, 2009



*[Signature]*  
Notary Public

Residing in Madison County

Shirley J. White  
Printed Name

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

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