


shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall have consented thereto in writing.

31. SEVERABILITY. Invalidation of any of the foregoing covenants or restrictions by judgment or court order shall in no way affect any of the other covenants and restrictions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Developer, as the owner of the Real Estate, has hereunto caused its name to be subscribed this 9th day of July, 2001.

By: Davis Homes, LLC,
an Indiana limited liability company

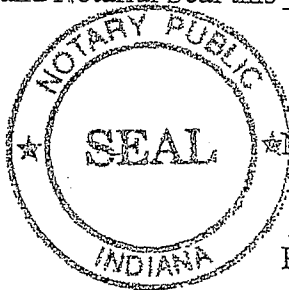
By: Davis Holding Corporation,
managing member

By: 
C. Richard Davis
Vice President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for the State of Indiana, personally appeared C. Richard Davis, Vice President of Davis Holding Corporation, an Indiana corporation, and acknowledged the execution of this instrument as his voluntary act and deed as such officer on behalf of such corporation for the uses and purposes hereinabove set forth.

Witness my signature and Notarial Seal this 9th day of July, 2001.



Li-Ching Wu
Notary Public

Li-Ching Wu
Printed

My commission expires:

4/21/08

I am a resident of

Hamilton County, Indiana.

This Instrument was prepared by Ronald F. Shady, Jr., Vice President of Davis Holding Corporation, 3755 East 82nd Street, Suite 120, Indianapolis, Indiana, 46240.

Exhibit "A"

Briarbrook Village Section Two
Land Description

Part of the Northeast Quarter of the Northeast Quarter of Section 21, Township 16 North, Range 5 East of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of said Northeast Quarter; thence South $00^{\circ}07'48''$ West along the East line of said Quarter Section a distance of 360.98 feet; thence South $89^{\circ}45'08''$ West (assumed bearing parallel with the North line of said Quarter Section) parallel with the North line of said Quarter Section a distance of 915.94 feet to the POINT OF BEGINNING; thence continuing South $89^{\circ}45'08''$ West parallel with the North line of said Quarter Section a distance of 424.01 feet to the West line of said Quarter Quarter Section; thence South $00^{\circ}08'32''$ West along the West line of said Quarter Quarter Section a distance of 974.90 feet to the Southwest corner of said Quarter Quarter Section; thence North $89^{\circ}46'40''$ East along the South line of said Quarter Quarter Section a distance of 517.75 feet; thence North $01^{\circ}48'17''$ East a distance of 100.17 feet to a point on a curve concave Northerly having a central angle of $07^{\circ}59'17''$ and a radius of 175.00 feet; thence Westerly along the arc of said curve a distance of 24.40 feet (said arc being subtended by a chord having a bearing of North $84^{\circ}12'05''$ West and a length of 24.38 feet); thence North $09^{\circ}47'34''$ East on a non-tangent line to last described curve a distance of 50.00 feet; thence North $00^{\circ}07'48''$ East parallel with the East line of said Quarter Section a distance of 523.11 feet; thence South $89^{\circ}46'40''$ West parallel with the South line of said Quarter Quarter Section a distance of 73.75 feet; thence North $00^{\circ}13'20''$ West a distance of 150.00 feet; thence South $89^{\circ}46'40''$ West parallel with the South line of said Quarter Quarter Section a distance of 5.00 feet; thence North $00^{\circ}13'20''$ West a distance of 150.07 feet to the Point of Beginning. Containing 10.794 Acres (470,166 Square Feet), more or less.

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WANDA MARTIN
MARION COUNTY RECORDER

Martha Q. Womack PLAT COVENANTS AND RESTRICTIONS

BRIARBROOK VILLAGE

SECTION 3

The undersigned, DAVIS HOMES, LLC, an Indiana limited liability company (the "Developer"), is the Owner of the real estate more specifically described in Exhibit "A" attached hereto (the "Real Estate"). The Developer is concurrently platting and subdividing the Real Estate as shown on the plat for Briarbrook Village, Section 3, which is filed of record May 11, 1999, in the office of the Recorder of Marion County, Indiana (the "Plat") and desires in the Plat to subject the Real Estate to the provisions of these Plat Covenants and Restrictions. The subdivision created by the Plat (the "Subdivision") is to be known and designated as "Briarbrook Village, Section Three". In addition to the covenants and restrictions hereinafter set forth, the Real Estate is also subject to those covenants, conditions and restrictions contained in the Declaration of Covenants, Conditions and Restrictions of Briarbrook Village, dated July 21, 1997, and recorded on July 22, 1997 as Instrument No. 97-101319 in the office of the Recorder of Marion County, Indiana, as the same may be amended or supplemented from time to time as therein provided (the "Declaration"), and to the rights, powers, duties and obligations of the Briarbrook Village Community Association, Inc. (the "Association"), set forth in the Declaration. If there is any irreconcilable conflict between any of the covenants and restrictions contained herein and any of the covenants and restrictions contained in the Declaration, the covenants and restrictions contained in the Declaration shall govern and control, but only to the extent of the irreconcilable conflict, it being the intent hereof that all covenants and restrictions contained herein shall be applicable to the Real Estate to the fullest extent possible. Capitalized terms used herein shall have the same meaning as given in the Declaration.

In order to provide adequate protection to all present and future Owners of Lots or Residence Units in the Subdivision, the following covenants and restrictions, in addition to those set forth in the Declaration, are hereby imposed upon the Real Estate:

1. PUBLIC RIGHT OF WAY. The rights-of-way of the streets as shown on the Plat, if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way.

2. COMMON AREAS. There are areas of ground on the Plat marked "Common Area". Developer hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas, subject to the conditions and restrictions contained in the Declaration.

3. UTILITY, DRAINAGE AND SANITARY SEWER EASEMENTS. There are areas of ground on the Plat marked "Utility Easements, Drainage Easements and Sanitary Sewer Easements", either separately or in combination. The Utility Easements are hereby created and reserved for the use of all public utility companies (not including transportation companies), governmental agencies and the Association for access to and installation, maintenance, repair or removal of poles, mains, ducts, drains, lines, wires, cables and other equipment and facilities for the furnishing of utility services, including cable television services. The Drainage Easements are hereby created and reserved for (i) the use of Developer during the "Development Period" (as such term is defined in the Declaration) for access to and installation, repair or removal of a drainage system, either by surface drainage or appropriate underground installations, for the Real Estate and adjoining property and (ii) the use of the Association and the Department of Capital Asset Management of the City of Indianapolis for access to and maintenance, repair and replacement of such drainage system. The owner of any Lot in the Subdivision subject to a Drainage Easement, including any builder, shall be required to keep the portion of said Drainage Easement on his Lot free from obstructions so that the storm water drainage will be unimpeded and will not be changed or altered without a permit from the Department of Capital Asset Management and the prior written approval of the Developer. The Sanitary Sewer Easements are hereby created and reserved for the use of the Department of Capital Asset Management and, during the Development Period, Developer for access to and installation, repair, removal, replacement or maintenance of an underground sanitary sewer system. The delineation of the Utility, Drainage and Sanitary Sewer Easement areas on the Plat shall not be deemed to be a limitation on the rights of any entity for whose use any such easement is created and reserved to go on any Lot subject to such easement temporarily to the extent reasonably necessary for the exercise of the rights granted to it by this Paragraph 3. Except as installed by Developer or installed as provided above, no structures or improvements, including without limitation decks, patios, fences, walkways or landscaping, shall be erected or maintained upon said easements.

4. LANDSCAPE EASEMENTS. There are areas of ground on the Plat marked "Landscape Easements" which are hereby created and reserved: (i) for the use of the Developer during the Development Period for access to and the installation, maintenance and replacement of foliage, landscaping, screening materials and other improvements and (ii) for the use of the Association for access to and the installation, maintenance and replacement of foliage, landscaping, screening materials and other similar improvements. Except as installed by Developer or installed and maintained by the Association or with the prior written consent of the Architectural Review Committee, no structure or improvements shall be maintained in or upon said Landscape Easements.

5. BUILDING LOCATION - FRONT, BACK AND SIDE YARD REQUIREMENTS. Building lines and building setback lines are established on the Plat. No building shall be

erected or maintained between said setback lines and the front, rear or side lot line (as the case may be) of a Lot. The setback lines may vary in depth in excess of the minimum as designated on the Plat. The minimum front yard set back shall be as shown on the Plat. The minimum side yard set back shall be five (5) feet, provided that with the prior written consent of Developer such side yard set back may be reduced to less than five (5) feet but in no event to less than three (3) feet. In any case, the minimum aggregate side yard shall be ten (10) feet.

6. RESIDENTIAL UNIT SIZE AND OTHER REQUIREMENTS. No Residence Unit constructed on a Lot shall have less than nine hundred (900) square feet of total living area, exclusive of garages, carports and open porches. The minimum main (first floor) living area of any building higher than one story shall be six hundred sixty (660) square feet. Each Residence Unit shall include an attached one-car (or larger) enclosed garage. The maximum height of any structure constructed on a Lot shall be thirty-five (35) feet. The maximum height of any residential accessory building shall be twenty (20) feet.

7. RESIDENTIAL UNIT USE. All Lots in the Subdivision shall be used solely for residential purposes. No business building shall be erected on any Lot, and no business may be conducted on any part thereof. No building shall be erected, placed or permitted to remain on any Lot other than (1) one detached single-family residence not to exceed two stories in height and expressly permitted residential accessory buildings.

8. ACCESSORY AND TEMPORARY BUILDINGS. Except as used by Developer or its designees pursuant to Paragraph 13.3 of the Declaration, no trailers, shacks, outhouses or unenclosed or unattached accessory buildings of any kind shall be erected or situated on any Lot in the Subdivision, except that one (1) mini-barn shall be permitted on each Lot provided that the Architectural Review Committee shall have first expressly approved the same in writing.

9. TEMPORARY RESIDENCE. No trailer, camper, motor home, truck, van, shack, tent, boat, bus, recreational vehicle, basement or garage may be used at any time as a residence, temporary or permanent; nor may any structure of a temporary character be used as a residence.

10. NUISANCES. No domestic animals raised for commercial purposes and no farm animals or fowl shall be kept or permitted on any Lot. No noxious, unlawful or otherwise offensive activity shall be carried out on any Lot, nor shall anything be done thereon which may be or may become a serious annoyance or nuisance to the neighborhood.

11. VEHICLE PARKING. No camper, motor home, bus, truck, trailer, boat, snowmobile or other recreational vehicle of any kind may be stored on any Lot in open public view. No vehicles of any kind may be put up on blocks or jacks to accommodate car repair on a Lot unless such repairs are done in the garage. Disabled vehicles shall not be allowed to remain in open public view.

12. SIGNS. No sign of any kind shall be displayed to the public view on any Lot, except that one sign of not more than six (6) square feet may be displayed at any time for the

purpose of advertising a property for sale, and except that Developer and its affiliates and designees, including any builder, may use larger signs during the sale and development of the Subdivision.

13. MAILBOXES. All mailboxes and replacement mailboxes shall be uniform and shall conform to the standards set forth by the Architectural Review Committee.

14. GARBAGE AND REFUSE DISPOSAL. Trash and refuse disposal will be on an individual basis, Lot by Lot. The community shall not contain dumpsters or other forms of general or common trash accumulation except to facilitate development and house construction. No Lot shall be used or maintained as a dumping ground for trash. Rubbish, garbage and other waste shall be kept in sanitary containers. All equipment for storage or disposal of such materials shall be kept clean and shall not be stored on any Lot in open public view. No rubbish, garbage or other waste shall be allowed to accumulate on any Lot. No homeowner or occupant of a Lot shall burn or bury any garbage or refuse.

15. STORAGE TANKS. No gas, oil or other storage tanks shall be installed on any Lot.

16. WATER SUPPLY AND SEWAGE SYSTEMS. No private or semi-private water supply or sewage disposal system may be located upon any Lot. No septic tank, absorption field or similar method of sewage disposal shall be located or constructed on any Lot.

17. DITCHES AND SWALES. All owners, including builders, shall keep unobstructed and in good maintenance and repair all open storm water drainage ditches and swales which may be located on their respective Lots. No filling, regrading, piping, rerouting or other alteration of any open ditch or swale may be made without the express written consent of the Architectural Review Committee, and subject to the approval of the appropriate governmental entity.

18. DRIVEWAYS. Each driveway in the Subdivision shall be of concrete or asphalt material.

19. ANTENNA AND SATELLITE DISHES. Outdoor satellite dishes shall be permitted in the Subdivision; provided, however, that (i) the diameter of the satellite dish shall be no more than twenty-four (24) inches; (ii) only one (1) satellite dish shall be permitted on each Lot; and (iii) the Architectural Review Committee shall have first determined that the satellite dish is appropriately placed and properly screened in order to preserve property values and maintain a harmonious and compatible relationship among Residence Units in the Subdivision.

20. AWNINGS. No metal, fiberglass, canvas or similar type material awnings shall be permitted in the Subdivision, except that a builder may utilize a canvas or similar type material awning on its model home sales center in the Subdivision.

21. FENCING. No fence shall be erected on or along any Lot line, nor on any Lot, the purposes or result of which will be to obstruct reasonable vision, light or air. All fences shall be kept in good repair and erected so as to enclose the property and decorate the same without unreasonable hindrance or obstruction to any other property. Any fencing permitted to be used in the Subdivision (unless installed by Developer) must be wooden or black or green vinyl coated chain link and shall not be higher than six (6) feet. Uncoated chain link fencing is prohibited. No fencing shall extend forward of the furthest back front corner of the residence. All fencing style, color, location and height shall be generally consistent within the Subdivision and shall be subject to prior written approval of the Architectural Review Committee. Fences are allowed in easements but are erected at owner's risk as such fences may be partially or completely torn down by others if they interfere with the installation, operation, and/or maintenance of the facilities for which the easement has been reserved.

22. SWIMMING POOLS AND SPORTS COURTS. No above-ground swimming pools shall be permitted in the Subdivision. No hard surfaced sports courts of any kind shall be permitted on any Lot except as approved by the Architectural Review Committee.

23. SOLAR PANELS. No solar heat panels shall be permitted on roofs of any structures in the Subdivision. All such panels shall be enclosed within fenced areas and shall be concealed from the view of neighboring Lots, common areas and the streets.

24. OUTSIDE LIGHTING. Except as otherwise approved by the Developer in connection with a builder's model home sales center, all outside lighting contained in or with respect to the Subdivision shall be of an ornamental nature compatible with the architecture of the project and shall provide for projection of light so as not to create a glare, distraction or nuisance to other property owners in the vicinity of or adjacent to the project.

25. SITE OBSTRUCTIONS. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting points twenty-five (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 sight-line 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 a sufficient height to prevent obstruction of such sight lines.

26. VIOLATION. Violation or threatened violation of these covenants and restrictions shall be grounds for an action by the Developer, the Association or any person or entity having any right, title or interest in the Real Estate, and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants or restrictions. Available relief in any such action shall include recovery of damages for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys reasonable fees incurred by any party successfully enforcing these covenants

and restrictions; provided, however, that neither the Developer nor the Association shall be liable for damages of any kind to any person for failing to enforce such covenants or restrictions.

27. METROPOLITAN DEVELOPMENT COMMISSION. The Metropolitan Development Commission of the City of Indianapolis, its successors and assigns shall have no right, power or authority to enforce any covenants, restrictions or other limitations contained herein or in the Declaration other than those covenants, restrictions or limitations that expressly run in favor of the Metropolitan Development Commission; provided that nothing herein shall be construed to prevent the Metropolitan Development Commission from enforcing any provisions of the Subdivision Control Ordinance, 58-AO-3, as amended, or any conditions attached to approval of the Plat by the Plat Committee.

28. AMENDMENT. These covenants and restrictions may be amended at any time by the then owners of at least sixty-seven percent (67%) of the Lots in all Subdivisions which are now or hereafter made subject to and annexed to the Declaration; provided, however, that until all of the Lots in such Subdivisions have been sold by Developer, any such amendment shall also require the prior written approval of Developer. Each such amendment shall be evidenced by a written instrument, which instrument shall set forth facts sufficient to indicate compliance with this paragraph and shall be recorded in the office of the Recorder of Marion County, Indiana. No amendment which adversely affects the rights of a public utility shall be effective with respect to such public utility without its written consent thereto. No amendment which is contrary to a zoning commitment shall be effective without the written approval of the affected adjacent homeowners associations designated by the Indianapolis Department of Metropolitan Development.

29. TERM. The foregoing plat covenants and restrictions, as the same may be amended from time to time, shall run with the land and shall be binding upon all persons or entities from time to time having any right, title or interest in the Real Estate and on all persons or entities claiming under them, until December 31, 2016, and thereafter they shall continue automatically in effect unless terminated by a vote of a majority of the then Owners of the Lots in the Subdivision; provided, however, that no termination of these covenants and restrictions shall affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall have consented thereto in writing.

30. SEVERABILITY. Invalidity of any of the foregoing covenants or restrictions by judgment or court order shall in no way affect any of the other covenants and restrictions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Developer, as the owner of the Real Estate, has hereunto caused its name to be subscribed this 6th day of May, 1999.

By: Davis Homes, LLC,
an Indiana limited liability company

By: Davis Holding Corporation,
managing member

By: *Christopher R. White*
Christopher R. White
Vice President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, a Notary Public in and for the State of Indiana, personally appeared Christopher R. White, Vice President of Davis Holding Corporation, an Indiana corporation, and acknowledged the execution of this instrument as his voluntary act and deed as such officer on behalf of such corporation for the uses and purposes hereinabove set forth.

Witness my signature and Notarial Seal this 6th day of May, 1999.

Li-Ching Wu
Notary Public

Li-Ching Wu
Printed



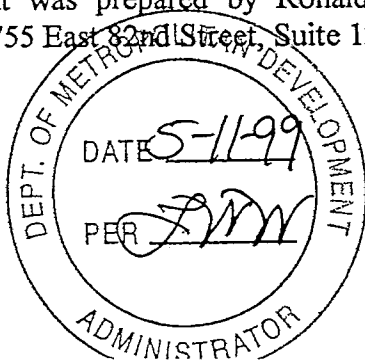
My commission expires:

4-21-00

I am a resident of

Hamilton County, Indiana.

This Instrument was prepared by Ronald F. Shady, Jr., Vice President of Davis Holding Corporation, 3755 East 82nd Street, Suite 120, Indianapolis, Indiana, 46240.



APPROVED THIS 7th
DAY OF MAY 19 99
Christine Stewart
ASSESSOR OF WARREN TOWNSHIP

Exhibit "A"

LAND DESCRIPTION

Part of the Northeast Quarter of the Northeast Quarter of Section 21, Township 16 North, Range 5 East of the Second Principal Meridian in Marion County, Indiana, more particularly described as follows:

Commencing at a Brass Plug at the Northeast corner of said Northeast Quarter; thence South 00°07'48" West along the East line of said Quarter Section a distance of 360.98 feet to the Northeast corner of Briarbrook Village Section One per plat thereof recorded as Instrument No. 970101322 in the Office of The Recorder of Marion County, Indiana; (the following fifteen (15) courses are along the Northerly, Easterly and Southerly lines of said Briarbrook Village Section One); (1) thence South 89°45'08" West (assumed bearing parallel with the North line of said Quarter Section) a distance of 915.94 feet; (2) thence South 00°13'20" East a distance of 150.07 feet to the POINT OF BEGINNING; (3) thence North 89°46'40" East parallel with the South line of said Quarter Quarter Section a distance of 500.00 feet; (4) thence North 78°00'36" East a distance of 122.58 feet; (5) thence North 89°46'40" East parallel with the South line of said Quarter Quarter Section a distance of 205.17 feet; (6) thence South 00°07'48" West parallel with the East line of said Quarter Section a distance of 290.00 feet; (7) thence South 89°46'40" West parallel with the South line of said Quarter Quarter Section a distance of 80.00 feet; (8) thence South 86°03'13" West a distance of 90.83 feet; (9) thence North 87°16'56" West a distance of 29.43 feet; (10) thence North 70°59'03" West a distance of 58.85 feet; (11) thence South 89°46'40" West parallel with the South line of said Quarter Quarter Section a distance of 240.00 feet; (12) thence South 00°04'38" West a distance of 368.56 feet; (13) thence South 89°46'40" West a distance of 99.87 feet; (14) thence North 00°07'48" East parallel with the East line of said Quarter Section a distance of 8.56 feet; (15) thence South 89°46'40" West a distance of 150.13 feet; thence North 00°07'48" East parallel with the East line of said Quarter Section a distance of 460.01 feet; thence South 89°46'40" West parallel with the South line of said Quarter Quarter Section a distance of 78.75 feet; thence North 00°13'20" West a distance of 150.00 feet to the Point of Beginning. Containing 6.878 Acres (299,593 Square Feet), more or less.