

Instrument
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HAMILTON COUNTY, INDIANA
MARY L CLARK
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26.00
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PLAT COVENANTS AND RESTRICTIONS

ELLER TRAILS

SECTION 3

DAVIS HOMES, LLC, an Indiana limited liability company ("Developer"), is the Owner of the real estate more specifically described in Exhibit "A" attached hereto and made a part hereof (the "Real Estate"). Developer is concurrently platting and subdividing the Real Estate as shown on the plat for Eller Trails, Section 3, which is filed of record simultaneously, in the office of the Recorder of Hamilton 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 "Eller Trails". In addition to the covenants and restrictions hereinafter set forth, the Real Estate is also subject to those covenants and restrictions contained in the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Eller Trails, dated August 27, 1996 and recorded on August 28, 1996 as Instrument No. 9609636575, in the office of the Recorder of Hamilton 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 Eller Trails 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 Public Works of the Town of Fishers 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 Public Works and prior written approval of the Developer. The Sanitary Sewer Easements are hereby created and reserved for the use of the Department of Public Works and, during the Development Period, for the use of Developer for access to and installation, repair, removal replacement or maintenance of a sanitary sewer system. The delineation of the Utility, Drainage and Sanitary Sewer Easement areas on the Plat shall not be deemed a limitation on the rights of any entity for whose use any such easement is created and reserved to enter onto 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 or with the written approval of 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. 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 such 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 setback shall be twenty-five (25) feet, the minimum rear yard setback shall be twenty-five (25) feet, and the minimum aggregate side yard between residences shall be twelve (12) feet. All minimum setbacks listed herein shall be strictly applied to all Lots, except that a zoning variance for the reduction of such setbacks, duly sought by the Owner of a Lot and approved by the Town of Fishers, may allow such Owner to reduce the required setback to the extent approved in said zoning variance.

5. RESIDENTIAL UNIT SIZE AND OTHER REQUIREMENTS. No residence constructed on a Lot shall have less than twelve hundred (1200) square feet of total floor area, exclusive of garages, carports and open porches, and the minimum total floor area of any building

higher than one story shall be sixteen hundred (1600) square feet. Each Residence Unit shall include an attached two-car (or larger) enclosed garage. The maximum height of any residential dwelling constructed on a Lot shall be thirty-five (35).

6. RESIDENTIAL UNIT USE. All Lots in the Subdivision shall be used solely for single-family residential purposes and no other uses. No building shall be erected, placed or permitted to remain on any Lot other than one detached single-family residence not to exceed two stories in height and permanently attached residential accessory buildings, subject to the terms hereof. Any garage, tool shed, storage building or any other attached building erected or used as an accessory building to a residence shall be of a permanent type of construction, shall be attached to the Residence Unit and shall conform to the general architecture and appearance of such residence.

7. ACCESSORY AND TEMPORARY BUILDINGS. No trailers, shacks, outhouses or detached or unenclosed storage sheds, tool sheds or accessory buildings of any kind shall be erected or situated on any Lot in the Subdivision, except that used by the Developer or by a builder during the construction of a residential building on the property, which temporary construction structures shall be removed upon completion of construction of the Subdivision or building, as the case may be.

8. TEMPORARY RESIDENCE. No trailer, camper, motor home, truck, shack, tent, boat, recreational vehicle, basement, garage or outbuilding or other structure of a temporary character may be used at any time as a residence, temporary or permanent.

9. 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.

10. VEHICLE PARKING. No camper, motor home, 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.

11. 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 the builders, may use larger signs during the sale and development of the Subdivision.

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

13. 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 within the Subdivision.

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

15. 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.

16. 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, subject to the approval of the appropriate governmental entity.

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

18. 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 inches (24"); (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.

19. AWNINGS. No metal, fiberglass, canvas or similar type material awnings or patio covers 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.

20. 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 must be wooden or black vinyl coated chain link and shall not be higher than six (6) feet. Uncoated chain link fencing is prohibited. No fencing shall extend into a yard, fronting onto a street, closer to the street than the 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.

21. SWIMMING POOLS. No above-ground swimming pools shall be permitted in the Subdivision.

22. SPORT COURTS. No hard surfaced sport courts of any kind shall be permitted in the rear yard area 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. (i) There shall be a street light at the entrance to the Subdivision and the light shall be maintained by the Association, (ii) 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. If any tree or shrub planted on the Town's property between the street and the right-of-way easement line shall, in the opinion of the Town Council of the Town of Fishers, create a hazardous obstruction to vision which may endanger vehicular or pedestrian traffic, then said tree or shrub shall be appropriately trimmed or removed by the owner, pursuant to the requirements of the Town.

26. MAINTENANCE OF PLANTINGS WITHIN RIGHT-OF-WAYS. The Owner or person in control of the dominant real estate between the street and sidewalk and/or right-of-way easement line on which any tree or shrub is planted pursuant to the above, shall be responsible for the maintenance or removal of the tree or shrub if such removal is necessary. If, after notice from the Town, such Owner or person fails to maintain or remove a dead tree or shrub or any dead or dangerous limbs or branches thereon, the Town may remove said shrub, tree or limbs and collect the costs from such Owner and/or person. The Town and all public utilities retain their ownership and right of access to the area between the street and the right-of-way easement line of the dominant Owner and retain their right to reasonably remove any tree or shrub impeding the necessary work to be performed by the Town and/or all public utilities, or other

properly authorized users. Neither the Town nor any public utility or other properly authorized user of the Town's property between the street and the right-of-way easement line shall be liable to the Owner of the dominant real estate for any damage done to trees or shrubs located upon Town property between the street and the right-of-way easement line as the result of actions of the Town or any public utility or authorized user or their agents or employees in the performance of their duties. If any tree or shrub planted within the Town's property between the street and the right-of-way easement line shall cause damage to any street, curb or sidewalk, then said tree or shrub causing such damage shall be removed and the damage repaired by the dominant Owner or person in control as set forth above.

27. 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.

28. FISHERS PLANNING COMMISSION. The Fishers Planning Commission, its successors and assigns shall have no right, power or authority to enforce any covenants, restrictions or other limitations contained herein other than those covenants, restrictions or limitations that expressly run in favor of the Planning Commission; provided that nothing herein shall be construed to prevent the Commission from enforcing any provisions of the Subdivision Control Ordinance, as amended, or any conditions attached to approval of the Plat by the Plat Committee.

29. 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 require the prior written approval of Developer. Each such amendment shall be evidenced by a written instrument, signed by the Owner or Owners concurring therein, which instrument shall set forth facts sufficient to indicate compliance with this paragraph and shall be recorded in the office of the Recorder of Hamilton 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 therein. 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 Town of Fishers.

30. 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.

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 13th day of August, 1997.

By: Davis Homes, LLC,

By: Davis Holding Corporation,
Manager-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, the 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 13th day of August, 1997.

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.

Exhibit "A"

LAND DESCRIPTION

A part of the Northwest Quarter of Section 10, Township 17 North, Range 4 East of the Second Principal Meridian, Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northeast corner of the Northwest Quarter of said Section 10; thence South 89°06'43" West along the North line of said Northwest Quarter a distance of 1117.37 feet; thence South 00°00'00" East (assumed bearing) parallel with the East line of said Northwest Quarter a distance of 387.30 feet; thence South 89°06'43" West parallel with said North line a distance of 580.07 feet; thence South 00°00'00" East parallel with said East line a distance of 322.04 feet to the POINT OF BEGINNING; thence continuing South 00°00'00" East parallel with said East line a distance of 193.02 feet; thence North 89°06'41" West a distance of 21.78 feet; thence South 00°00'00" East parallel with said East line a distance of 153.76 feet; thence South 89°06'43" West parallel with said North line a distance of 21.78 feet; thence South 11°56'04" West a distance of 278.30 feet; thence South 20°10'39" West a distance of 83.68 feet; thence South 52°36'29" West a distance of 150.33 feet; thence North 70°36'13" West a distance of 150.33 feet; thence North 32°39'46" West a distance of 150.33 feet; thence North 20°10'39" East a distance of 566.91 feet; thence North 71°00'00" East a distance of 246.69 feet to the Point of Beginning. Containing 5.165 Acres (224,976 Square Feet), more or less.
