

MARTHA A. WOMACKS  
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SUBJECT TO FINAL ACCEPTANCE  
FOR TRANSFER



**FILED**

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MAR 21 2002

PIKE TOWNSHIP  
ASSESSOR

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

OF

**ENCLAVE AT MOLLER ROAD**

THIS DECLARATION ("Declaration") is made this 4 day of MARCH, 2002 by Davis Homes, LLC, an Indiana limited liability company ("Developer").

Recitals

1. Developer is the owner of the real estate which is described in Exhibit "A" attached hereto and made a part hereof (the "Initial Real Estate").
2. Developer intends to subdivide the Initial Real Estate into residential lots.
3. Before subdividing the Initial Real Estate, Developer desires to subject the Initial Real Estate to certain covenants, conditions and restrictions for the purpose of preserving and protecting the value and desirability of the Initial Real Estate for the benefit of each owner of any part thereof.
4. Developer further desires to create an organization to which shall be assigned the responsibility for maintaining and administering the common areas and certain other areas of the Real Estate and of administering and enforcing the covenants and restrictions contained in this Declaration and the subdivision plats of the Initial Real Estate as hereafter recorded in the office of the Recorder of Marion County, Indiana and of collecting and disbursing assessments and charges as herein provided.
5. Developer may from time to time subject additional real estate located within the tracts adjacent to the Initial Real Estate to the provisions of this Declaration (the Initial Real Estate, together with any such addition, as and when the same becomes subject to the provisions of this Declaration as herein provided, is hereinafter referred to as the "Real Estate" or the "Subdivision").

NOW, THEREFORE, Developer hereby declares that the Real Estate is and shall be acquired, held, transferred, sold, hypothecated, leased, rented, improved, used and occupied subject to the following covenants, conditions and restrictions, each of which shall run with the land and be binding upon, and inure to the benefit of, Developer and any other person or entity hereafter acquiring or having any right, title or interest in or to the Real Estate or any part thereof.

ARTICLE I

DEFINITIONS

The following terms, when used in this Declaration with initial capital letters, shall have the following respective meanings:

1.1 "Association" means The Enclave at Moller Road Community Association, Inc., an Indiana not-for-profit corporation, which Developer has caused or will hereafter cause to be incorporated, and its successors and assigns.

1.2 "Architectural Review Committee" means the architectural review committee established pursuant to Paragraph 6.1 of this Declaration.

1.3 "Bufferyard Easements" means those areas of ground so designated on a Plat of any part of the Real Estate.

1.4 "Common Areas" means (i) all portions of the Real Estate shown on any Plat of a part of the Real Estate as a "Common Area" or a "Private Drive Easement" or which are otherwise not located in Lots and are not dedicated to the public and (ii) all facilities, structures, buildings, improvements and personal property owned or leased by the Association from time to time. Common Areas may be located within a public right-of-way.

1.5 "Common Expenses" means (i) expenses associated with the maintenance, repair or replacement of the Common Areas and the performance of the responsibilities and duties of the Association, including without limitation expenses for the improvement, maintenance or repair of the improvements, lawn, foliage and landscaping located on a Drainage, Utility or Sanitary Sewer Easement or on a Bufferyard Easement to the extent the Association deems it necessary to maintain such easement, (ii) expenses associated with the maintenance, repair or continuation of the drainage facilities located within and upon the Drainage, Utility or Sewer Easements, (iii) all judgments, liens and valid claims against the Association, (iv) all expenses incurred to procure liability, hazard and any other insurance provided for herein and (v) all expenses incurred in the administration of the Association or the performance of the terms and provisions of this Declaration.

1.6 "Developer" means Davis Homes, LLC, an Indiana limited liability company, and any successors or assigns whom it designates in one or more written recorded instruments to have the rights of Developer hereunder.

1.7 "Development Period" means the period of time commencing with the date of recordation of this Declaration and ending on the date Developer or its affiliates no longer own any Lot within the Real Estate, but in no event shall the Development Period extend beyond the date seven (7) years after the date this Declaration is recorded.

1.8 "Lot" means any parcel of land shown and identified as a lot on a Plat of any part of the Real Estate.

1.9 "Mortgagee" means the holder of a duly recorded first mortgage lien on any Lot or Residence Unit.

1.10 "Owner" means the record owner, whether one or more persons or entities, of fee-simple title to any Lot, including contract sellers, but excluding for all purposes those persons or entities having an interest merely as security for the performance of an obligation unless specifically indicated to the contrary. The term Owner as used herein shall include Developer so long as Developer shall own any Lot in the Real Estate.

1.11 "Plat" means a duly approved final plat of any part of the Real Estate as hereafter recorded in the office of the Recorder of Marion County, Indiana.

1.12 "Residence Unit" means one-half (1/2) of any building generally designed for residential occupancy and constructed on any part of the Real Estate (including one-half (1/2) of the party wall separating such Residence Unit from the adjoining, attached Residence Unit contained within the same building), it being understood that the Lots in the Real Estate have been configured to accommodate the construction of attached "duplex" Residence Units which may be acquired, held, transferred, sold, hypothecated, leased, rented, improved, used and occupied as separate and distinct parcels of real property subject to the provisions of this Declaration.

1.13 "Utility, Drainage or Sewer Easements" means those areas of ground so designated on a Plat of any part of the Real Estate.

## ARTICLE II

### APPLICABILITY

All Owners, their tenants, guests, invitees and mortgagees, and any other person using or occupying a Lot or any other part of the Real Estate shall be subject to and shall observe and comply with the applicable covenants, conditions and restrictions set forth in this Declaration and any rules and regulations adopted by the Association as herein provided, as the same may be amended from time to time.

The Owner of any Residence Unit (i) by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from the Developer or its affiliates or any other builder or any other Owner of the Residence Unit, or (ii) by the act of occupancy of the Residence Unit, shall conclusively be deemed to have accepted such deed, executed such contract or undertaken such occupancy subject to the covenants, conditions and restrictions of this Declaration. By acceptance of a deed, execution of a contract or undertaking of such occupancy, each Owner covenants, for such Owner, such Owner's heirs, personal representatives, successors and assigns, with Developer and the other Owners from time to time, to keep, observe, comply with and perform the covenants, conditions and restrictions of this Declaration.

ARTICLE III

PROPERTY RIGHTS

3.1 Owners' Easement of Enjoyment of Common Areas. Developer hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas. Such easement shall run with and be appurtenant to each Lot and related Residence Unit, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Areas which are in addition to the regular and special assessments described herein;

(ii) the right of the Association to fine any Owner or make a special assessment against any Lot in the event a person permitted to use the Common Areas by the Owner of such Lot violates any rules or regulations of the Association;

(iii) the right of the Association to dedicate or transfer all or any part of the Common Areas or grant easements therein to any public agency, authority or utility for such purposes and subject to such conditions as may be set forth in the instrument of dedication or transfer;

(iv) the easements reserved elsewhere in this Declaration and in any Plat of any part of the Real Estate; and

3.2 Permissive Use. Any Owner may permit his or her family members, guests, tenants or contract purchasers who reside in the Residence Unit to use his or her right of use and enjoyment of the Common Areas subject to the terms of this Declaration and any rules and regulations promulgated by the Association from time to time.

3.3 Conveyance of Common Areas. Developer may at any time and from time to time convey all of its right, title and interest in and to any of the Common Areas to the Association by warranty deed, and such Common Areas so conveyed shall then be the property of the Association; provided, however, that the Common Areas for the Initial Real Estate and any additional lands added to the scheme of this Declaration, respectively, shall be conveyed to the Association on or before the time that the first Lot within the Initial Real Estate or such additional land, respectively, as the case may be, is conveyed for residential use.

3.4 Easements for Inexactness of Construction. The boundary lines separating each Lot in the Subdivision shall be as shown on the Plat, and it is intended that the center of the party wall separating each Residence Unit from the adjoining Residence Unit shall be physically located exactly on the center of the boundary line separating the two adjoining Lots upon which such Residence Units are constructed. However, in the event that, because of inexactness of staking or construction, settling or shifting during or after construction or any other reason, the center of any such party wall shall not coincide with the center of the associated boundary line, then a permanent easement shall exist on the Lot onto which the encroaching Residence Unit encroaches for the exclusive benefit of the Owner of the encroaching Residence Unit for purposes of occupancy, possession, maintenance, use and enjoyment, and such

easement shall run with the land and be binding upon, and inure to the benefit of, any person or entity then or thereafter acquiring or having any right, title or interest in or to the benefited or encumbered Lot or any part thereof, including, without limitation, Mortgagees. The portion of the encumbered Lot subjected to such an easement shall be limited to exact area onto which the encroaching Residence Unit encroaches upon such Lot.

3.5 Easements for Association Maintenance. There shall exist on every Lot in the Subdivision a permanent easement benefiting the Association and its authorized representatives for the purpose of granting the Association and/or such representatives full right, power and authority to come onto such Lot at all reasonable times to perform the maintenance described in Section 5.7 (ix) below.

#### ARTICLE IV

#### USE RESTRICTIONS

4.1 Lakes. There shall be no swimming, skating, boating, fishing in or on or other recreational use of any lake, pond, creek, ditch or stream on the Real Estate. The Association may promulgate rules and regulations with respect to the permitted uses, if any, of the lakes or other bodies of water on the Real Estate.

4.2 Use of Common Areas. Subject to section 4.1 above, the Common Areas shall be used only for recreational purposes and other purposes permitted or sanctioned by the Association.

4.3 Lot Access. All Lots shall be accessed from the interior private street of the Subdivision. No direct access is permitted to any Lot via Moller Road.

4.4 Lease of Residence Units. No Residence Unit shall knowingly be sold to an investor/owner who has the intention of renting the Residence Unit to one or more tenants instead of occupying the Residence Unit; provided, however, that the renting of Residence Units shall not otherwise be prohibited so long as any lease is in written form and has a term of at least one (1) year and contains a provision specifically obligating the tenant thereunder to comply with all applicable provisions of this Declaration

4.5 Other Use Restrictions Contained in Plat Covenants and Restrictions. The Plat Covenants and Restrictions relating to the Real Estate contain additional restrictions on the use of the Lots in the Subdivision, including, without limitation, prohibitions against commercial use, detached accessory buildings and nuisances; restrictions relating to the use of Bufferyard Easements, and Utility, Drainage and Sewer Easements; and restrictions relating to temporary structures, vehicle parking, signs, mailboxes, garbage and refuse disposal, storage tanks, water supply and sewage systems, ditches and swales, driveways, antenna and satellite dishes, awnings, fencing, swimming pools, solar panels and outside lighting. Such prohibitions and restrictions contained in the Plat Covenants and Restrictions are hereby incorporated by reference as though fully set forth herein.

ARTICLE V

ASSOCIATION

5.1 Membership. Each Owner shall automatically become a member of the Association and shall remain a member of the Association so long as he or she owns a Lot.

5.2 Classes of Membership and Vote. The Association shall have two (2) classes of membership, as follows:

(i) Class A Members. Class A members shall be all Owners other than Developer (unless Class B membership has been converted to Class A membership as provided in the immediately following subparagraph). Each Class A member shall be entitled to one (1) vote per Lot owned.

(ii) Class B Member. The Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each Lot owned by Developer. The Class B membership shall cease and be converted to Class A membership upon the Applicable Date (as defined in Section 5.3 below).

5.3 Applicable Date. The term "Applicable Date" shall mean when the total votes outstanding in the Class A membership is equal to the total votes outstanding in the Class B membership or the expiration of the Development Period, whichever shall first occur.

5.4 Multiple or Entity Owners. Where more than one person or entity constitutes the Owner of a Lot, all such persons or entities shall be members of the Association, but the single vote in respect of such Lot shall be exercised as the persons or entities holding an interest in such Lot determine among themselves. In no event shall more than one person exercise a Lot's vote and no Lot's vote shall be split.

5.5 Board of Directors. The members of the Association shall elect a Board of Directors of the Association as prescribed by the Association's Articles of Incorporation and By-Laws. The Board of Directors of the Association shall manage the affairs of the Association.

5.6 Professional Management. No contract or agreement for professional management of the Association, nor any contract between Developer and the Association, shall be for a term in excess of three (3) years. Any such agreement or contract shall provide for termination by either party with or without cause, without any termination penalty, on written notice as provided therein, but in any event, with at least ninety (90) days prior written notice.

5.7 Responsibilities of the Association. The responsibilities of the Association shall include, but shall not be limited to:

(i) Maintenance of the Common Areas including any and all improvements thereon as the Association deems necessary or appropriate.

(ii) Installation and replacement of any and all improvements, signs, lawn, foliage and landscaping in and upon the Common Areas or Bufferyard Easements as the Association deems necessary or appropriate.

(iii) Maintenance, repair and replacement of any entrance street light, any private street (including without limitation Lalista Court) signs and any private streets, which may be shown on any Plat of a part of the Real Estate as Common Area.

(iv) Replacement of the drainage system in and upon the Common Areas as the Association deems necessary or appropriate and the maintenance of any drainage system installed in or upon the Common Areas by Developer or the Association. Nothing herein shall relieve or replace the obligation of each Owner of a Lot subject to a Drainage Easement to keep the portion of the drainage system and Drainage Easement on such Lot free from obstructions so that the storm water drainage will be unimpeded.

(v) Maintenance of any lake water so as not to create stagnant or polluted waters affecting the health and welfare of the community.

(vi) Procuring and maintaining for the benefit of the Association, its officers and Board of Directors and the Owners, the insurance coverage required under this Declaration.

(vii) Assessment and collection from the Owners and payment of all Common Expenses.

(viii) Performing or contracting for property or Association management, Common Area maintenance (including snow removal on Private Drive Easements) or other services (such as trash removal (if not performed by local government) or additional snow removal) as the Association from time to time may deem necessary or advisable.

(ix) Cutting the established lawn located on any occupied Lot and maintaining any trees planted by the Association on such Lot; provided, however, that the Owner of such Lot shall be solely responsible for initially establishing an acceptable lawn and watering, weeding and fertilizing the lawn; edging around fences, shrubs, bushes, trees and any other improvements; leaf removal; and caring for and maintaining any other landscaping not planted by the Association (including, without limitation, shrubs, trees, bushes, flowers or plants) and provided, further, that the Owner of such Lot shall be solely responsible for cutting any grass located inside any fenced area of the Lot unless the Owner shall provide reasonable and regular access to such area to the Association and its authorized representatives.

(x) Enforcing the rules and regulations of the Association and the requirements of this Declaration and any applicable zoning or other recorded covenants, in each case, as the Association deems necessary or advisable.

**5.8 Powers of the Association.** The Association may adopt, amend or rescind reasonable rules and regulations (not inconsistent with the provisions of this Declaration) governing the use and enjoyment of the Common Areas and the management and administration of the Association, in each case as the Association deems necessary or advisable. The rules and regulations promulgated by the Association may provide for reasonable interest and late charges on past due installments of any regular

or special assessments or other charges or fines against any Owner or Lot. The Association shall furnish or make copies available of its rules and regulations to the Owners prior to the time when the rules and regulations become effective.

5.9 Compensation. No director or officer of the Association shall receive compensation for his or her services as such director or officer, except to the extent expressly authorized by a majority vote of the Owners present at a duly constituted meeting of the Association members.

5.10 Non-Liability of Directors and Officers. The directors and officers of the Association shall not be liable to the Owners or any other persons for any error or mistake of judgment in carrying out their duties and responsibilities as directors or officers of the Association, except for their own individual willful misconduct or gross negligence. It is intended that the directors and officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association except in their capacity as Owners.

5.11 Indemnity of Directors and Officers. The Association shall indemnify, hold harmless and defend any person, his or her heirs, assigns and legal representatives (collectively, the "Indemnitee") made or threatened to be made a party to any action, suit or proceeding by reason of the fact that he or she is or was a director or officer of the Association, against all costs and expenses, including attorneys fees, actually and reasonably incurred by the Indemnitee in connection with the defense of such action, suit or proceeding, or in connection with any appeal thereof or to enforce the indemnity rights contemplated hereby except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Indemnitee is guilty of gross negligence or willful misconduct in the performance of his or her duties. The Association shall also reimburse any such Indemnitee for the reasonable costs of settlement of or for any judgment rendered in any such action, suit or proceeding, unless it shall be adjudged in such action, suit or proceeding that such Indemnitee was guilty of gross negligence or willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against an Indemnitee, no director or officer shall be considered or deemed to be guilty of or liable for gross negligence or willful misconduct in the performance of his or her duties where, acting in good faith, such director or officer relied on the books and records of the Association or statements or advice made by or prepared by any managing agent of the Association or any accountant, attorney or other person or firm employed or retained by the Association to render advice or service, unless such director or officer had actual knowledge of the falsity or incorrectness thereof; nor shall a director be deemed guilty of gross negligence or willful misconduct by virtue of the fact that he or she failed or neglected to attend any meetings of the Board of Directors of the Association. The costs and expenses incurred by any Indemnitee in defending any action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Indemnitee to repay the amount paid by the Association if it shall ultimately be determined that the Indemnitee is not entitled to indemnification or reimbursement as provided in this section 5.11.



## ARTICLE VI

### ARCHITECTURAL REVIEW COMMITTEE

6.1 Creation. There shall be, and hereby is, created and established an Architectural Review Committee to perform the functions provided for herein. At all times during the Development Period, the Architectural Review Committee shall consist of one or more members appointed, from time to time, by Developer and who shall be subject to removal by Developer at any time with or without cause. After the end of the Development Period, the Architectural Review Committee shall be a standing committee of the Association, consisting of three (3) persons appointed, from time to time, by the Board of Directors of the Association. The three persons appointed by the Board of Directors to the Architectural Review Committee shall consist of Owners of Lots but need not be members of the Board of Directors. The Board of Directors may at any time after the end of the Development Period remove any member of the Architectural Review Committee upon a majority vote of the members of the Board of Directors.

6.2 Purposes and Powers of Architectural Review Committee. The Architectural Review Committee shall review and approve the design, appearance and location of all residences, structures or any other improvements placed or modified by any person on any Lot and the installation and removal of any trees, bushes, shrubbery and other landscaping on any Lot, in such a manner as to preserve the value and desirability of the Real Estate and the harmonious relationship among Residence Units and the natural vegetation and topography.

(i) In General. No residence, building, structure, antenna, walkway, fence, deck, pool, tennis court, basketball goal, wall, patio or other improvement of any type or kind shall be erected, constructed, placed or modified, changed or altered on any Lot without the prior written approval of the Architectural Review Committee. Such approval shall be obtained only after written application has been made to the Architectural Review Committee by the Owner of the Lot requesting authorization from the Architectural Review Committee. Such written application shall be in the manner and form prescribed from time to time by the Architectural Review Committee and, in the case of construction or placement of any improvement, shall be accompanied by two (2) complete sets of plans and specifications for the proposed improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which the Architectural Review Committee may reasonably require. Unless otherwise permitted by the Architectural Review Committee, plot plans shall be prepared by either a registered land surveyor, engineer or architect.

(ii) Power of Disapproval. The Architectural Review Committee may refuse to approve any application (a "Requested Change") made to it when:

(a) The plans, specifications, drawings or other materials submitted are inadequate or incomplete, or show the Requested Change to be in violation of any of the terms of this Declaration or the Plat Covenants and Restrictions applicable to any part of the Real Estate;

(b) The design or color scheme of a Requested Change is not in harmony with the general surroundings of the Lot or with other Residence Units or related improvements; or

(c) The Requested Change in the opinion of the Architectural Review Committee would not preserve or enhance the value and desirability of the Real Estate or would otherwise be contrary to the interests, welfare or rights of the Developer or any other Owner.

(iii) Rules and Regulations. The Architectural Review Committee, from time to time, may promulgate, amend or modify additional rules and regulations or building policies or procedures as it may deem necessary or desirable to guide Owners as to the requirements of the Architectural Review Committee for the submission and approval of Requested Changes.

6.3 Duties of Architectural Review Committee. If the Architectural Review Committee does not approve a Requested Change within forty-five (45) days after all required information on the Requested Change shall have been submitted to it, then such Requested Change shall be deemed denied. One copy of submitted material shall be retained by the Architectural Review Committee for its permanent files.

6.4 Liability of the Architectural Review Committee. Neither the Architectural Review Committee, the Association, the Developer nor any agent or member of any of the foregoing, 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 in connection with a Requested Change or for any decision made by it unless made in bad faith or by willful misconduct.

6.5 Inspection. The Architectural Review Committee or its designee may, but shall not be required to, inspect work being performed to assure compliance with this Declaration and the materials submitted to it pursuant to this Article VI and may require any work not consistent with an approved Requested Change, or not approved, to be stopped and removed at the offending Owner's expense.

## ARTICLE VII

### ASSESSMENTS

7.1 Purpose of Assessments. Each Owner of a Lot by acceptance for itself and related entities of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association for his obligation for (i) regular assessments for Common Expenses ("Regular Assessments") and (ii) special assessments for capital improvements and operating deficits and for special maintenance and repairs ("Special Assessments"). Such assessments shall be established, shall commence upon such dates and shall be collected as herein provided. The general purpose of Regular and Special Assessments is to provide funds to maintain and improve the Common Areas and related facilities for the benefit of the Owners, and the same shall be levied for the following specific purposes: (i) to promote the health, safety and welfare of the residents occupying the Real Estate, (ii) for the improvement, maintenance and repair of the Common Areas, the improvements, lawn foliage and landscaping within and upon the Common Areas, Bufferyard Easements, Drainage, Utility or Sewer Easements and the drainage system, (iii) for the performance of the responsibilities and duties and

satisfaction of the obligations of the Association and (iv) for such other purposes as are reasonably necessary or specifically provided herein. A portion of the Regular Assessment may be set aside or otherwise allocated in a reserve fund for repair and replacement of any capital improvements which the Association is required to maintain. The Regular and Special Assessments levied by the Association shall be uniform for all Lots within the Subdivision.

7.2 Regular Assessments. The Board of Directors of the Association shall have the right, power and authority, without any vote of the members of the Association, to fix from time to time the Regular Assessment against each Residence Unit at any amount not in excess of the "Maximum Regular Assessment" as follows:

(i) Until December 31 of the year immediately following the conveyance of the first Lot to an Owner for residential use, the Maximum Regular Assessment on any Residence Unit for any calendar year shall not exceed Five Hundred Dollars (\$500.00).

(ii) From and after December 31 of the year immediately following the conveyance of the first Lot to an Owner for residential use, the Maximum Regular Assessment on any Residence Unit for any calendar year may be increased by not more than five percent (5%) per year above the Regular Assessment for the previous calendar year without a vote of the members of the Association.

(iii) From and after December 31 of the year immediately following the conveyance of the first Lot to an Owner for residential use, the Board of Directors of the Association may fix the Regular Assessment at an amount in excess of the maximum amount specified in subparagraph (ii) above only with the approval of a majority of those members of each class of members of the Association who cast votes in person or by proxy at a meeting of the members of the Association duly called and held for such purpose.

(iv) Each Residence Unit shall be assessed an equal amount for any Regular Assessment, excepting any proration for ownership during only a portion of the assessment period.

7.3 Special Assessments. In addition to Regular Assessments, the Board of Directors of the Association may make Special Assessments against each Residence Unit, for the purpose of defraying, in whole or in part, the cost of constructing, reconstructing, repairing or replacing any capital improvement which the Association is required to maintain or the cost of special maintenance and repairs or to recover any deficits (whether from operations or any other loss) which the Association may from time incur, but only with the assent of a majority of the members of each class of members of the Association who cast votes in person or by proxy at a duly constituted meeting of the members of the Association called and held for such purpose.

7.4 No Assessment against Developer During the Development Period. Neither the Developer nor any entity affiliated with Developer shall be assessed any portion of any Regular or Special Assessment during the Development Period.

7.5 Date of Commencement of Regular or Special Assessments; Due Dates. The Regular Assessment or Special Assessment, if any, shall commence as to each Residence Unit on the first day of the first calendar month following the first conveyance of the related Lot to an Owner, provided that, in

the case of the conveyance by Developer of a Lot to any builder in the Subdivision not related to Developer, such commencement shall occur on the first day of the sixth calendar month following the first conveyance of the Lot to such builder.

The Board of Directors of the Association shall fix the amount of the Regular Assessment at least thirty (30) days in advance of each annual assessment period. Written notice of the Regular Assessment, any Special Assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to each Owner subject thereto. The installment periods and due dates for all assessments shall be established by the Board of Directors. The Board of Directors may provide for reasonable interest and late charges on past due installments of assessments.

7.6 Failure of Owner to Pay Assessments.

(i) No Owner may exempt himself from paying Regular Assessments and Special Assessments due to such Owner's nonuse of the Common Areas or abandonment of the Residence Unit or Lot belonging to such Owner. If any Owner shall fail, refuse or neglect to make any payment of any assessment when due, the lien for such assessment (as described in section 7.7 below) may be foreclosed by the Board of Directors of the Association for and on behalf of the Association as a mortgage on real property or as otherwise provided by law. In any action to foreclose the lien for any assessment, the Owner and any occupant of the Residence Unit shall be jointly and severally liable for the payment to the Association on the first day of each month of reasonable rental for such Residence Unit, and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Residence Unit or Lot, and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid assessments. The Board of Directors of the Association, at its option, may in the alternative bring suit to recover a money judgment for any unpaid assessment without foreclosing or waiving the lien securing the same. In any action to recover an assessment, whether by foreclosure or otherwise, the Board of Directors of the Association, for and on behalf of the Association, shall be entitled to recover from the Owner of the respective Lot costs and expenses of such action incurred (including but not limited to attorneys fees) and interest from the date such assessments were due until paid.

(ii) Notwithstanding anything contained in this section 7.6 or elsewhere in this Declaration, any sale or transfer of a Residence Unit or Lot to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid assessments which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien shall not relieve the prior Owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Residence Unit, or the purchaser thereof, at such foreclosure sale, or the grantee in the event of conveyance in lieu thereof, from liability for any assessments thereafter becoming due or from the lien therefor.

7.7 Creation of Lien and Personal Obligation. All Regular Assessments and Special Assessments, together with interest, costs of collection and attorneys' fees, shall be a continuing lien upon the Lot against which such assessment is made prior to all other liens except only (i) tax liens on any Lot in favor of any unit of government or special taxing district and (ii) the lien of any first mortgage of record. Each such assessment, together with interest, costs of collection and attorneys' fees, shall also be

the personal obligation of the Owner of the Lot at the time such assessment became due and payable. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. The personal obligation for delinquent assessments (as distinguished from the lien upon the Lot) shall not pass to such Owner's successors in title unless expressly assumed by them. The Association, upon request of a proposed Mortgagee or proposed purchaser having a contractual right to purchase a Lot, shall furnish to such Mortgagee or purchaser a statement setting forth the amount of any unpaid Regular or Special Assessments or other charges against the Lot. Such statement shall be binding upon the Association as of the date of such statement.

7.8 Expense Incurred to Clear Drainage, Utility or Sanitary Sewer Easement Deemed a Special Assessment. As provided in the Plat Covenants relating to the Real Estate, the Owner of any Lot subject to a Drainage, Utility or Sanitary Sewer Easement including any builder, shall be required to keep the portion of said Drainage, Utility or Sanitary Sewer Easement on his Lot free from obstructions so that the storm water drainage will not be impeded and will not be changed or altered without a permit from the applicable local governmental authority and prior written approval of the Developer and the Association. Also, no structures or improvements, including without limitation decks, patios, pools, fences, walkways or landscaping of any kind, shall be erected or maintained upon said easements, and any such structure or improvement so erected shall, at Developer's or the Association's written request, be promptly removed by the Owner at the Owner's sole cost and expense. If, within thirty (30) days after the date of such written request, such Owner shall not have commenced and diligently and continuously effected the removal of any obstruction of storm water drainage or any prohibited structure or improvement, Developer or the Association may enter upon the Lot and cause such obstruction, structure or improvement to be removed so that the Drainage, Utility or Sanitary Sewer Easement is returned to its original designed condition. In such event, Developer or the Association shall be entitled to recover the full cost of such work from the offending Owner and such amount shall be deemed a special assessment against the Lot owned by such Owner which, if unpaid, shall constitute a lien against such Lot and may be collected by the Association pursuant to this Article 7 in the same manner as any Regular Assessment or Special Assessment may be collected.

## ARTICLE VIII

### INSURANCE

8.1 Casualty Insurance. The Association shall purchase and maintain fire and extended coverage insurance in an amount equal to the full insurable replacement cost of any improvements owned by the Association. The Association shall also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable. Such insurance policy shall name the Association as the insured. The insurance policy or policies shall, if practicable, contain provisions that the insurer (i) waives its rights to subrogation as to any claim against the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors and all Owners and their respective agents and guests and (ii) waives any defense to payment based on invalidity arising from the acts of the insured. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried.

8.2 Liability Insurance. The Association shall also purchase and maintain a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance shall cover all of the Common Areas and shall inure to the benefit of the Association, its Board of Directors, officers, agents and employees, any committee of the Association or of the Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Real Estate and the Developer.

8.3 Other Insurance. The Association shall also purchase and maintain any other insurance required by law to be maintained, including but not limited to workers compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to officers' and directors' liability insurance.

8.4 Miscellaneous. The premiums for the insurance described above shall be paid by the Association as Common Expenses.

8.5 Owners to Maintain Insurance. Each Owner of a Residence Unit shall at all times maintain fire and extended coverage insurance in an amount equal to the full insurable replacement cost of such Residence Unit.

## ARTICLE IX

### MAINTENANCE

9.1 Maintenance of Lots and Improvements. Except to the extent such maintenance shall be the responsibility of the Association under any of the foregoing provisions of this Declaration, it shall be the duty of the Owner of each Lot, including any builder during the building process, to keep the grass on the Lot properly cut and keep the Lot, including any Drainage, Utility or Sewer Easements located on the Lot, free of weeds, trash or construction debris and otherwise neat and attractive in appearance including without limitation, the proper maintenance of the exterior of any structures on such Lot. If the Owner of any Lot fails to do so in a manner reasonably satisfactory to the Association, the Association shall have the right (but not the obligation), through its agents, employees and contractors, to enter upon said Lot and clean, repair, maintain or restore the Lot, as the case may be, and the exterior of the improvements erected thereon. The cost of any such work shall be and constitute a special assessment against such Lot and the owner thereof, whether or not a builder, and may be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general. Neither the Association nor any of its agents, employees or contractors shall be liable to the offending Owner for any damage which may result from any maintenance work performed hereunder.

9.2 Damage to Common Areas. In the event of damage to or destruction of any part of the Common Areas or any improvements which the Association owns or is required to maintain hereunder, including without limitation any Subdivision improvement, such as fences or columns erected by the Developer in right-of-way areas, the Association shall repair or replace the same from the insurance to the extent of the availability of such insurance proceeds. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Special Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds. Notwithstanding any obligation or duty of the Association hereunder to

repair or maintain the Common Areas and other improvements if, due to the willful, intentional or negligent acts or omissions of any Owner (including any builder) or of a member of his family or of a guest, subcontractor, employee, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused to the Common Areas or any other improvements maintained by the Association pursuant to this Paragraph 9.2, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then the Association shall cause such repairs to be made and such Owner shall pay for such damage and such maintenance, repairs and replacements, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Association, the cost of repairing such damage shall constitute a special assessment against such Owner, whether or not a builder, and its Lot, to be collected and enforced in the manner provided in this Declaration for the collection and enforcement of assessments in general.

## ARTICLE X

### MORTGAGES

10.1 Notice to Mortgagees. The Association, upon request, shall provide to any Mortgagee a written certificate or notice specifying unpaid assessments and other defaults, if any, of the Owner of any Lot in the performance of the Owner's obligations under this Declaration or any other applicable documents.

10.2 Notice to Association. Any Mortgagee who holds a first mortgage lien on a Lot may notify the Secretary of the Association by certified mail (return receipt requested) of the existence of such mortgage and provide the name and address of the Mortgagee. A record of the Mortgagee and name and address shall be maintained by the Secretary of the Association and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws of the Association or otherwise shall be deemed effectively given if mailed to the Mortgagee at the address shown in such record in the time provided. Unless notification of a Mortgage and the name and address of the Mortgagee are furnished to the Secretary as herein provided, no notice to any Mortgagee shall be required, and no Mortgagee shall be entitled to vote on any matter to which it otherwise may be entitled by virtue of this Declaration, the By-Laws of the Association, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

10.3 Mortgagees' Rights Upon Default by Association. If the Association fails (i) to pay taxes or the charges that are in default and that have or may become liens against any Common Areas, or (ii) to pay on a timely basis any premium on hazard insurance policies on Common Areas or to secure hazard insurance coverage for the Common Areas upon lapse of a policy, then the Mortgagee with respect to any Lot may make the payment on behalf of the Association.

ARTICLE XI  
AMENDMENTS

11.1 By the Association. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting of the members of the Association at which the proposed amendment is to be considered.

(ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of votes of all Owners.

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the vote required by subparagraph (iv) below at a meeting of the members of the Association duly called and held in accordance with the provisions of the Association's By-Laws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than ninety percent (90%) in the aggregate of all votes entitled to be cast by all Owners if the proposed amendment is considered and voted upon on or before twenty (20) years after the date hereof, and not less than seventy-five percent (75%) of such votes if the proposed amendment is considered and voted on after twenty (20) years from the date hereof. In any case, provided, however, that any such amendment shall require the prior written approval of Developer so long as Developer or any entity related to Developer owns any Lot or Residence Unit within the Real Estate. In the event any Residence Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner provided the Mortgagee has given prior notice of its mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing sub-section 10.2. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication or mortgaging of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

(v) Mortgagees' Vote on Special Amendments. No amendments to this Declaration shall be adopted which changes any provision of this Declaration which would be deemed to be of a material nature by the Federal National Mortgage Association under Section 601.02 of Part V, Chapter 4, of the Fannie Mac Selling Guide, or any similar provision of any subsequent guidelines published in lieu of or in substitution for the Selling Guide, or which would be deemed to require the first mortgagee's consent under the Freddie Mac Sellers' and Servicers' Guide, Vol. 1, Section 2103(d), without the written approval of at least sixty-seven percent (67%) of the Mortgagees who have given prior notice of their mortgage interest to the Board of Directors of the Association in accordance with the provisions of the foregoing section 10.2.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if the Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee) or if the Mortgagee does not send its written objection to the proposed amendment prior to such



meeting. In the event that a proposed amendment is deemed by the Board of Directors of the Association to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees whose interests have been made known to the Board of Directors of the nature of such proposed amendment, and such amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days after the date such notices are mailed and if such notice advises the Mortgagee of the time limitation contained in this sentence.

11.2 By the Developer. Developer hereby reserves the right, so long as Developer or any entity related to Developer owns any Lot or Residence Unit within and upon the Real Estate, to make any technical amendments to this Declaration, without the approval of any other person or entity, for any purpose reasonably deemed necessary or appropriate by the Developer, including without limitation: to bring Developer or this Declaration into compliance with the requirement of any statute, ordinance, regulation or order of any public agency having jurisdiction thereof; to conform with zoning covenants and conditions; to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency or to induce any of such agencies to make, purchase, sell, insure or guarantee first mortgages; or to correct clerical or typographical errors in this Declaration or any amendment or supplement hereto; provided, however, that in no event shall Developer be entitled to make any amendment which has a material adverse effect on the rights of any Mortgagee, or which substantially impairs the rights granted by this Declaration to any Owner or substantially increases the obligations imposed by this Declaration on any Owner.

11.3 Recording. Each amendment to this Declaration need be executed only by Developer in any case where Developer has the right to amend this Declaration pursuant to Paragraph 11.2 and, otherwise, by the President or Vice President and Secretary of the Association; provided, however, that any amendment requiring the consent of Developer pursuant to Paragraph 11.1 shall contain Developer's signed consent. All amendments shall be recorded in the Office of the Recorder of Marion County, Indiana, and no amendment shall become effective until so recorded.

## ARTICLE XII

### PARTY WALLS

12.1 General Rules of Law Apply. Each wall which is designed and built for the purpose of separating two attached Residence Units shall constitute a party wall, and, to the extent not inconsistent with the terms and provisions of this Declaration, the general rules of common law regarding party walls shall apply.

12.2 Sharing of Repair and Maintenance. The reasonable cost of normal repair and maintenance of a party wall shall be shared equally by the two Owners who make use of such wall and, for purposes of this Section 12.2, the term "party wall" shall include the roof connecting the two attached Residence Units.

12.3 Destruction by Fire or Other Casualty. If a party wall is damaged or destroyed by fire or other casualty, either Owner who has made use of the wall may repair or restore the wall and the other

Owner shall contribute equally to the cost of such repair or restoration without prejudice, however, to the right of either Owner to seek a disproportionate contribution from another Owner on the grounds of such other Owner's negligence or willful misconduct.

12.4 Right to Contribution Runs with the Land. The right of any Owner to seek contribution from any other Owner pursuant to this Article XII shall run with the land and be binding upon, and inure to the benefit of, such Owners and any person or entity then or thereafter acquiring or having any right, title or interest in or to such Owners' Lots.

### ARTICLE XIII

#### MISCELLANEOUS

13.1 Right of Enforcement. Violation or threatened violation of any of the covenants, conditions or restrictions enumerated in this Declaration or in a Plat of any part of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, shall be grounds for an action by Developer, the Association, any Owner and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants, conditions or restrictions. Available relief in any such action shall include recovery of damages or other sums due for such violation; injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys fees reasonably incurred by any party successfully enforcing such covenants, conditions and restrictions; provided, however, that neither Developer, any Owner nor the Association shall be liable for damages of any kind to any person for failing or neglecting for any reason to enforce any such covenants, conditions or restrictions.

13.2 Delay or Failure to Enforce. No delay or failure on the part of any aggrieved party, including without limitation the Association and the Developer, to invoke any available remedy with respect to any violation or threatened violation of any covenants, conditions or restrictions enumerated in this Declaration or in a Plat of any part of the Real Estate shall constitute a waiver by that party of, or an estoppel of that party to assert, any right available to it upon the occurrence, recurrence or continuance of such violation.

13.3 Duration. These covenants, conditions and restrictions and all other provisions of this Declaration (as the same may be amended from time to time as herein provided) shall run with the land comprising the Real Estate and shall be binding on all persons and entities from time to time having any right, title or interest in the Real Estate or any part thereof, and on all persons claiming under them, until December 31, 2022, and thereafter shall continue automatically until terminated or modified by vote of a majority of all Owners at any time thereafter; provided, however, that no termination of this Declaration shall terminate or otherwise affect any easement hereby created and reserved unless all persons entitled to the beneficial use of such easement shall consent thereto.

13.4 Severability. Invalidation of any of the covenants, conditions or restrictions contained in this Declaration by judgment or court order shall not in any way affect any of the other provisions hereof, which shall remain in full force and effect.

13.5 Applicable Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Indiana.

13.6 Annexation. Additional land adjacent to the Real Estate may be annexed by Developer to the Real Estate (and from and after such annexation shall be deemed part of the Real Estate for all purposes of this Declaration) by execution and recordation by Developer in the Office of the Recorder of Marion County, Indiana, of a supplemental declaration, and such action shall require no approvals or other action of the Owners.

#### ARTICLE IV

##### DEVELOPER'S RIGHTS

14.1 Access Rights. Developer hereby declares, creates and reserves an access license over and across all of the Real Estate for the use of Developer and its representatives, agents, designees, contractors and affiliates during the Development Period. Notwithstanding the foregoing, the area of the access license created by this section 14.1 shall be limited to that part of the Real Estate which is not in, on, under, over, across or through a building or the foundation of a building properly located on the Real Estate. The parties for whose benefit this access license is herein created and reserved shall exercise such access rights only to the extent reasonably necessary and appropriate and such parties shall, to the extent reasonably practicable, repair any damage or destruction caused by reason of such parties' exercise of this access license.

14.2 Signs. Developer and its designees shall have the right to use signs of any size during the Development Period and shall not be subject to the Plat Covenants with respect to signs during the Development Period. The Developer and its designees shall also have the right to construct or change any building, improvement or landscaping on the Real Estate without obtaining the approval of the Architectural Review Committee at any time during the Development Period.

14.3 Sales Offices and Models. Notwithstanding anything to the contrary contained in this Declaration or a Plat of any part of the Real Estate now or hereafter recorded in the office of the Recorder of Marion County, Indiana, Developer, any entity related to Developer and any other person or entity with the prior written consent of Developer, during the Development Period, shall be entitled to construct, install, erect and maintain such facilities upon any portion of the Real Estate owned by Developer, the Association or such person or entity as, in the sole opinion of Developer, may be reasonably required or convenient or incidental to the development of the Real Estate or the sale of Lots and the construction or sale of Residence Units thereon. Such facilities may include, without limitation, storage areas or tanks, parking areas, signs, model residences, construction offices or trailers and sales offices or trailers.

IN WITNESS WHEREOF, this Declaration has been executed by Developer as of the date first above written.

Davis Homes, LLC, an Indiana Limited Liability Company, by its manager-member

Davis Holding Corporation, an Indiana Corporation

By: [Signature]  
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 Homes, LLC, an Indiana Limited Liability Company, who acknowledged the execution of the foregoing Declaration.

WITNESS my hand and Notarial Seal this 4 day of MARCH, 2002.

[Signature]  
Notary Public

DEBORAH WHITE  
Printed Name

My Commission Expires: 12-7-2007

County of Residence: JOHNSON

This instrument was prepared by and return recorded instrument to: Ronald F. Shady, Jr., Vice President of Davis Holding Corporation, 3755 East 82nd Street, Suite 120, Indianapolis, Indiana 46240, (317) 595-2907.

## Exhibit "A"

A part of the East Half of the Southeast Quarter of Section 1, Township 16 North Range 2 East, in the City of Indianapolis, Marion County, Indiana, being more particularly described as follows:

Commencing at a stone at the intersection of the centerline of Moller Road and the North line of said half Quarter Section; thence South 80 degrees 00 minutes 00 seconds East (assumed bearing) on and along said centerline 768.00 feet to a point of the North line of a tract of land conveyed to Owen E. and Marie B. Daupert by Edward C. and Lottie J. Fultz (as recorded in Volume 1385, Page 301 in the Office of the Recorder of Marion County, Indiana), said point also being the POINT OF BEGINNING of this description; thence continuing South 80 degrees 00 minutes 00 seconds East on and along said centerline 256.23 feet; thence North 89 degrees 11 minutes 42 seconds West 653.89 feet to a point on the West line of said Half Quarter Section; thence North 00 degrees 40 minutes 15 seconds East on and along said West line 250.20 feet; thence South 89 degrees 11 minutes 42 seconds East 680.86 feet to the POINT OF BEGINNING and containing 4.01 acres, more or less. Subject to all restrictions, rights-of-way and easements of record.

This record plat consists of 13 lots numbered 1A & B through 13A & B both inclusive, with streets, easements and common areas as shown hereon. The size of lots, widths of streets, easements and common areas are shown on this plat by figures denoting feet and decimal parts thereof.

The within described real estate represents the real estate as determined by a Land Title Survey prepared by Benchmark Surveying, Inc., and certified by Donn M. Scotten on July 3rd., 2001, and is recorded as Instrument #2001 - 0220346 in the Office of the Recorder of Marion County.

MARTHA A. WOMACKS  
13517 MAR 27 8  
SUBJECT TO THE PLAT FOR TRANSFER



**FILED**  
MAR 21 2002  
PIKE TOWNSHIP  
ASSESSOR

7

**PLAT COVENANTS AND RESTRICTIONS**

**ENCLAVE AT MOLLER ROAD**

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 The Enclave at Moller Road, which is filed of record simultaneously herewith 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 " The Enclave at Moller Road ". In addition to the covenants and restrictions hereinafter set forth, the Real Estate is also subject to those covenants and restrictions contained in the Declaration of Covenants, Conditions and Restrictions of The Enclave at Moller Road, dated March 4, 2002 and recorded on March, 2002 as Instrument No. 02-0057887 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 Enclave at Moller Road 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 Moller Road 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" (and, in accordance with the Declaration, areas of ground on the Plat marked "Private Drive Easement" shall also be included in the definition of 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. Common Areas are created and reserved for the use of the Developer, during the Development Period, and the Association for access to and the installation, maintenance and replacement of foliage, landscaping, screening materials, entrance walls, lighting, irrigation, the private drive and other improvements. Except as installed by Developer or installed and maintained by the Association or with the approval of the Architectural Review Committee, no structures or improvements, including without limitation piers, decks, walkways, patios and fences, shall be erected or maintained upon said Common Areas.
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 Board of Public Works of the City of

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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 Board of Public Works and prior written approval of the Developer or the Association. The Sanitary Sewer Easements are hereby created and reserved for the use of the Board of Public Works and, during the Development Period, for the use of Developer for access to and installation, repair, removal, replacement or maintenance of an underground storm and sanitary sewer system. The delineation of the Utility Easements, Drainage Easements 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 go on any portion of 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, pools, landscaping, fences or walkways, shall be erected or maintained upon said easements.

4. BUFFERYARD EASEMENTS. There are areas of ground on the Plat marked "Bufferyard Easements". Such Bufferyard Easements are hereby created and reserved for the use of the Developer, during the Development Period, and the Association for access to and the preservation, installation, maintenance and replacement of foliage and screening materials and other improvements. Except as installed by Developer or installed and maintained by the Association or with the approval of the Architectural Review Committee, no structures or improvements, including without limitation piers, decks, walkways, patios and fences, shall be erected or maintained upon said Bufferyard Easements and no trees or vegetation larger than two (2) inches in trunk diameter shall be removed from this area unless it is dead or causing a safety problem for the surrounding residents.
5. PRIVATE DRIVE EASEMENTS. There are areas of ground on the Plat marked "Private Drive Easements". Such Private Drive Easements are hereby created and reserved: (i) for the use of Developer during the Development Period for access to and installation, repair or removal of a private drive for the Real Estate and adjoining property and (ii) the use of the Association for access to and maintenance, repair and replacement of such private drive. The Owner of any Lot in the Subdivision subject to a Private Drive Easement, including any builder, shall be required to keep the portion of said Private Drive Easement on his Lot free from obstructions so that access to all lots in the Subdivision will be unimpeded and will not be changed or altered without prior written approval of the Developer or the Association.
6. BUILDING LOCATION - FRONT, BACK AND SIDE YARD REQUIREMENTS. 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 minimum front yard set back shall be as designated on the Plat. The minimum rear yard setback shall be fifteen feet (15) feet. The minimum side yard setback shall be five (5) feet on one side and zero (0) feet on the side adjacent to the adjoining Residence Unit.
7. RESIDENTIAL UNIT SIZE AND OTHER REQUIREMENTS. No one or two story Residence Unit constructed on a Lot shall have less than eleven hundred (1100) square feet of total living area, exclusive of garages, carports and open porches. Each residence shall include an attached two car (or larger) enclosed garage. The maximum height of any Residence Unit constructed on a Lot shall be twenty-eight (28) feet measured from the ground elevation to the peak of the gable. The exterior front façade of the structures shall include a minimum of fifty percent (50%) brick or masonry (excluding doors, windows, and gables). The traditional 2- story design ( with master bedroom on the second floor) shall not be built on more than 20% of the lots, and shall be constructed only on lots located on the south side of Lalista Court. All units shall have open, vaulted or cathedral ceilings in the entrance and/ or main living area.
8. 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 in violation of any home occupation provisions of the applicable zoning ordinance. No building shall be erected, placed or permitted to remain on any Lot other than one attached single-family residence.

9. ACCESSORY AND TEMPORARY BUILDINGS. No trailers, shacks, outhouses or detached or unenclosed storage sheds, tool sheds, garages 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.
10. TEMPORARY RESIDENCE. No trailer, camper, motor home, truck, shack, tent, boat, recreational vehicle, basement or garage may be used at any time as a residence, temporary or permanent; nor may any other structure of a temporary character be used as a residence.
11. 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.
12. VEHICLE PARKING. No camper, motor home, truck (over 3/4 ton load capacity), trailer, boat, personal watercraft, 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.
13. 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 Residential Unit for sale, and except that Developer and its affiliates and designees may use larger signs during the sale and development of the Subdivision.
14. MAILBOXES. All mailboxes and replacement mailboxes shall be uniform and shall conform to the standards set forth by the Architectural Review Committee.
15. 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. All garbage, trash cans and receptacles and woodpiles shall be screened.
16. STORAGE TANKS. No gas, oil or other storage tanks shall be installed on any Lot.
17. 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.
18. 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. All sump pump discharges shall be connected to a subsurface drain, storm sewer or lake. No drains shall be discharged directly to the ground surface. 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.
19. GARAGES/DRIVEWAYS. Each driveway in the Subdivision shall be of concrete or asphalt material.
20. ANTENNA AND SATELLITE DISHES. No outside antennas shall be permitted in the Subdivision. Outdoor satellite dishes shall be permitted in the Subdivision; provided, however, that the (i) the diameter



of the satellite dish shall be no more than thirty-nine inches ("39"), (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 the houses in the Subdivision.

21. AWNINGS. No metal, fiberglass, canvas or similar type material awnings or patio covers shall be permitted in the Subdivision.
22. 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 vinyl or vinyl coated materials and shall not be higher than six (6) feet in areas separating two adjoining patios and four feet in all other areas. 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. Fences are technically 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.
23. SWIMMING POOLS, SPORTS COURT AND PLAY EQUIPMENT. 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. No metal outdoor play equipment shall be permitted in the Subdivision.
24. 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.
25. OUTSIDE LIGHTING. Except as otherwise approved by the Developer, all outside lighting contained in or with respect to the Subdivision shall be of an ornamental nature compatible with the architecture within the Subdivision and shall provide for projection of light so as not to create a glare, distraction or nuisance to any Owner or other property owners in the vicinity of or adjacent to the Subdivision. All homes shall have uniform "dusk to dawn" front yard lights and/or coach lights attached to the house.
26. RESTRICTIONS ON INITIAL SALES BY BUILDER. In accordance with the Preliminary Plan of The Enclave – A Planned Unit Development, dated as of August 15, 2001, approved and recorded in connection with the rezoning of the Real Estate by Developer in the Office of Recorder of Marion County as Instrument No. \_\_\_\_\_, the initial sales of Residence Units by Developer shall be restricted so that at least one half (1/2) of such initial sales are made to one or more persons at least fifty-five (55) years of age or with the expectation that one or more persons at least fifty-five (55) years of age will occupy the Residence Unit. The restriction contained in this Paragraph 26 shall not, however, apply to any sales or resales of Residence Units by persons other than the Developer.
27. 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.
28. 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.

29. AMENDMENT. These covenants and restrictions may be amended at any time by a vote of no less than 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 the Subdivision 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, 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 City of Indianapolis.
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, 2022, 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 4 day of MARCH, 2002.

Davis Homes, LLC, an Indiana  
Indiana limited liability company, by its  
Manager Member,

Davis Holding Corporation, an  
Indiana corporation,

By: [Signature]  
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, the Vice President of Davis Homes, LLC, an Indiana limited liability company, 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 4 day of MARCH, 2002.

[Signature]  
Notary Public

DEBORAH WHITE  
Printed

My commission expires:

12-7-2007

I am a resident of  
Johnson 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 (317) 595-2907.

# Exhibit "A"

A part of the East Half of the Southeast Quarter of Section 1, Township 16 North Range 2 East, in the City of Indianapolis, Marion County, Indiana, being more particularly described as follows:

Commencing at a stone at the intersection of the centerline of Moller Road and the North line of said half Quarter Section; thence South 80 degrees 00 minutes 00 seconds East (assumed bearing) on and along said centerline 748.00 feet to a point of the North line of a tract of land conveyed to Owen E. and Marie B. Daupert by Edward C. and Lettie J. Fuhs (as recorded in Volume 1365, Page 301 in the Office of the Recorder of Marion County, Indiana), said point also being the POINT OF BEGINNING of this description; thence continuing South 80 degrees 00 minutes 00 seconds East on and along said centerline 356.33 feet; thence North 89 degrees 11 minutes 48 seconds West 633.69 feet to a point on the West line of said Half Quarter Section; thence North 00 degrees 48 minutes 18 seconds East on and along Said West line 236.20 feet; thence South 89 degrees 11 minutes 42 seconds East 656.00 feet to the POINT OF BEGINNING and containing 4.91 acres, more or less. Subject to all restrictions, rights-of-way and easements of record.

This record plat consists of 13 lots numbered 1A & B through 13A & B both inclusive, with streets, easements and common areas as shown hereon. The size of lots, widths of streets, easements and common areas are shown on this plat by figures denoting feet and decimal parts thereof.

The within described real estate represents the real estate as determined by a Land Title Survey prepared by Benchmark Surveying, Inc., and certified by Donn M. Scotten on July 3rd., 2001, and is recorded as Instrument #2001 - 0220346 in the Office of the Recorder of Marion County.

PLAT

Subdivision/ HPR The ENCLAVE at Moller Road

Legal Description a PT OF the East 1/2 OF SE 1/4 OF  
Sect. 1 TWP 16 NR-2 East  
in City OF INdpls MARION  
County

Owner DAVIS Homes LLC

Cross Reference	DMD/VOID STAMP	<u>✓</u>
<u>(1) 2002-57888</u>	LAND SURVEYOR	<u>✓</u>
<u>(2) 2002-57887</u>	TOWNSHIP	<u>✓</u>
_____	AUDITOR	<u>✓</u>
_____	NOTARY	<u>✓</u>

Declaration \_\_\_\_\_

Other \_\_\_\_\_

Township Pike

Contact Person Chris White \*

Phone Number 848-2830 \*

RECORD PLAT FOR RECORD

RECORD PLAT FOR RECORD

RECORD PLAT FOR RECORD

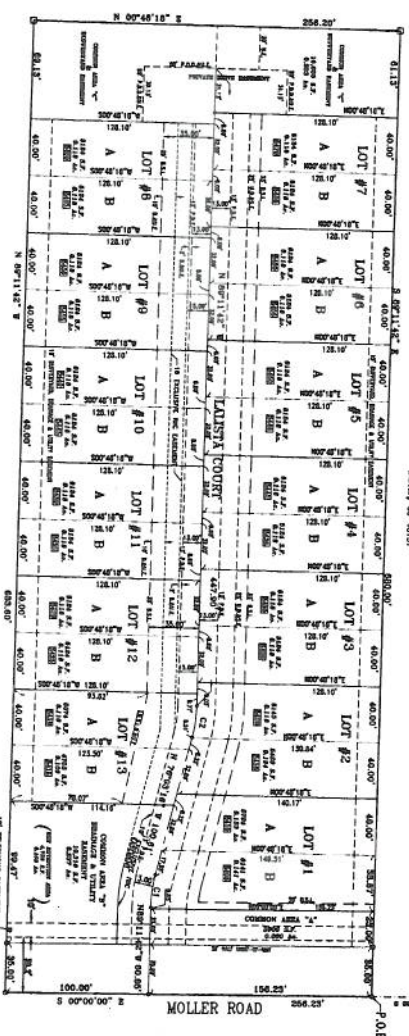
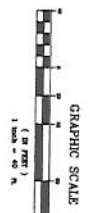


Table with 4 columns: CHAIN, LENGTH, AREA, and other survey data.



SITE DATA & LEGEND
PROPERTY OF THE STATE OF INDIANA
COUNTY OF MADISON

RECORD PLAT FOR THE ENCLAVE AT MOLLER ROAD
(CURRENT ZONING CLASSIFICATION = "D-P")
REZONING CASE # 2001-ZON-839 (# 2001-DP-008)
CERTIFICATE OF SURVEY

This record plat contains... The survey was conducted... by the Surveyor of Madison County, Indiana.

Surveyor's signature and seal, and other official stamps.

DAVIS HOMES, LLC
3755 EAST 82nd STREET, INDIANAPOLIS, INDIANA 46226-1200
BENCHMARK SURVEYING, INC.
20 East Airport Rd., Suite 500 - Brownsburg, IN 46112

\$ \_\_\_\_\_

Pages 1

PLAT

Subdivision/ HPR The ENCLAVE at Moller Road

Legal Description a PT OF the East 1/2 OF SE 1/4 OF  
Sect. 1 TWP 16 NR-2 East  
IN City OF INDEPLS MARION  
COUNTY

<sup>106</sup>  
Owner DAVIS Homes LLC

Cross Reference	DMD/VOID STAMP	<u>✓</u>
<u>(1) 2002-57888</u>	LAND SURVEYOR	<u>✓</u>
<u>(2) 2002-57887</u>	TOWNSHIP	<u>✓</u>
_____	AUDITOR	<u>✓</u>
_____	NOTARY	<u>✓</u>

Declaration \_\_\_\_\_

Other \_\_\_\_\_

Township Pike

Contact Person Chris White \*

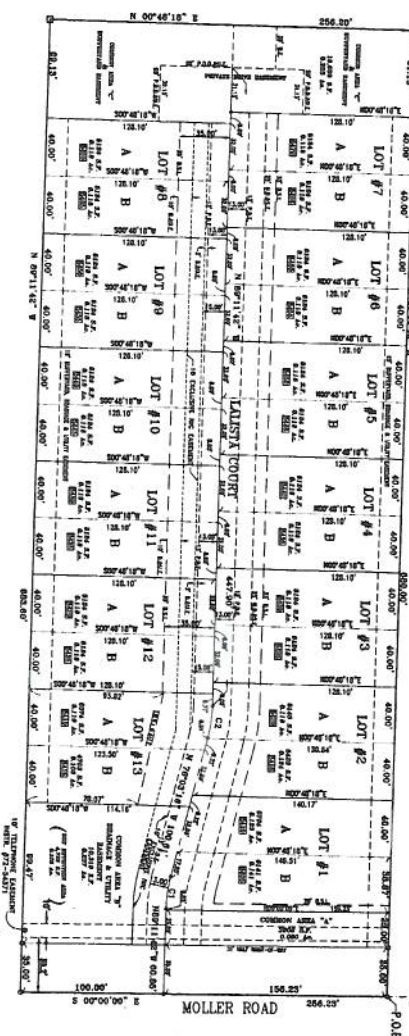
Phone Number 848-2830 \*

RECORD PLAT FOR RECORD  
 RECEIVED FOR RECORD  
 020057859

**RECORDING OFFICER:** The Metropolitan Development Commission, in accordance with the provisions of the Metropolitan Zoning Ordinance, has reviewed and approved the plat for recording. The Commission's review is limited to the technical aspects of the plat and does not constitute an endorsement of the project or a guarantee of the accuracy of the information provided thereon. The Commission's review is limited to the technical aspects of the plat and does not constitute an endorsement of the project or a guarantee of the accuracy of the information provided thereon.

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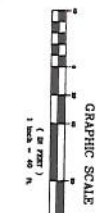
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LOT	AREA (SQ. FT.)	AREA (SQ. YD.)
LOT #1	10,000	227.78
LOT #2	10,000	227.78
LOT #3	10,000	227.78
LOT #4	10,000	227.78
LOT #5	10,000	227.78
LOT #6	10,000	227.78
LOT #7	10,000	227.78
LOT #8	10,000	227.78
LOT #9	10,000	227.78
LOT #10	10,000	227.78
LOT #11	10,000	227.78
LOT #12	10,000	227.78
LOT #13	10,000	227.78

**SITE DATA & LEGEND**

LOT #1 - 10,000 SQ. FT. (227.78 SQ. YD.)  
 LOT #2 - 10,000 SQ. FT. (227.78 SQ. YD.)  
 LOT #3 - 10,000 SQ. FT. (227.78 SQ. YD.)  
 LOT #4 - 10,000 SQ. FT. (227.78 SQ. YD.)  
 LOT #5 - 10,000 SQ. FT. (227.78 SQ. YD.)  
 LOT #6 - 10,000 SQ. FT. (227.78 SQ. YD.)  
 LOT #7 - 10,000 SQ. FT. (227.78 SQ. YD.)  
 LOT #8 - 10,000 SQ. FT. (227.78 SQ. YD.)  
 LOT #9 - 10,000 SQ. FT. (227.78 SQ. YD.)  
 LOT #10 - 10,000 SQ. FT. (227.78 SQ. YD.)  
 LOT #11 - 10,000 SQ. FT. (227.78 SQ. YD.)  
 LOT #12 - 10,000 SQ. FT. (227.78 SQ. YD.)  
 LOT #13 - 10,000 SQ. FT. (227.78 SQ. YD.)



**RECORD PLAT**  
 FOR  
**THE ENCLAVE**  
 AT  
**MOLLER ROAD**

(CURRENT ZONING CLASSIFICATION = "D-P")  
 REZONING CASE # 2001-ZON-839 (# 2001-DI-008)

**CERTIFICATE OF SURVEY**

I, the undersigned, being a duly qualified and licensed Surveyor, do hereby certify that the foregoing is a true and correct copy of the original plat as the same appears in my office, and that the same has been duly recorded in the office of the Recorder of Deeds, in accordance with the provisions of the laws of the State of Indiana.

Recorded this 11th day of \_\_\_\_\_, 2001.

*[Signature]*  
 Surveyor



**DAVIS HOMES, LLC**  
 3755 EAST 82<sup>ND</sup> STREET,  
 INDIANAPOLIS, INDIANA 46249-4112

**BENCHMARK SURVEYING, INC.**  
 20 East Airport Rd., Suite 500 - Brownsburg, IN 46112  
 (317) 858-1506

**DAVIS HOMES, LLC**  
 3755 EAST 82<sup>ND</sup> STREET,  
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