

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

OLD FARM SECTION 10C

THIS DECLARATION {"Declaration"} is made this            day of Ot: Ao\ a. Ly , 1996 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 there f.

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 Hendricks 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, tog·ether 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

.....

9600026777  
Filed for Record in  
HENDRICKS COUNTY IN  
JOY BRADLEY  
On 12-26-1996 At 02:06 pm.  
CDV            & 0.00  
Vol. 158 Pg. 210 - 235

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 Homestead at Old Farm 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 "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 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.

1.4 "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 or Utility Easement or on a Landscape 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 or Utility 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.

1.5 "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.

1.6 "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.

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

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 n 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 Hendricks County, Indiana.

1.12 "Residence Unit" means any single family home constructed on any part of the Real Estate.

1.13 "Utility or Drainage 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 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 and as the case may be, is conveyed for residential use.

#### 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 streets of the Subdivision.

4.4 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 Landscape Easements, and Utility and Drainage 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.





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 "Indemnatee") 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 Indemnatee 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 Indemnatee is guilty of gross negligence or willful misconduct in the performance of his or her duties. The Association shall also reimburse any such Indemnatee 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 three (3) 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 the adjacent 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

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, Landscape Easements, Drainage, Utility or Sanitary 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.

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 e h 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 One Hundred Fifty Dollars (\$150.00).

(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, 1996, 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.

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.

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

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.

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 th 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 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.

§ Expense Incurred to Clear Drainage or Utility 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 or Utility Easement including any builder, shall be required to keep the portion of said Drainage or Utility 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





including any builder during the building process, to keep the grass on the Lot properly cut and keep the Lot, including any Drainage or Utility 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 --.i..D, syrance to the extent of the availability of such insurance proceeds. If such insurance proceeds are insufficienc-e-o-c-over----- 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 i-n 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 applicabl 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:





Developer's signed consent. All amendments shall be recorded in the Office of the Recorder of Hendricks County, Indiana, and no amendment shall become effective until so recorded.

## ARTICLE XII

### MISCELLANEOUS

11 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 Hendricks 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.

12 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 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, 2016, and thereafter shall continue automatically until terminated or modified by vote in the majority of all Owners at any time thereafter; provided, however, that no termination of this Declaration shall terminate or otherwise affect any easement





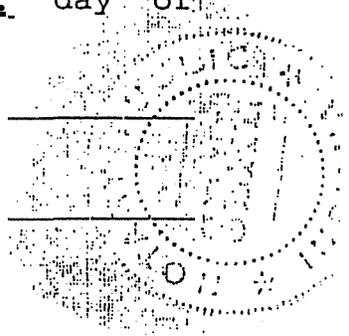
STATE OF INDIANA        )  
                                  )    **SS:**  
COUNTY OF MARION     )

Before me, a Notary Public, in and for the State of Indiana, personally appeared Ronald F. Shady, Jr., Vice President of Davis Holding Corporation, an Indiana corporation, who acknowledged the execution of the foregoing Declaration.

WITNESS my hand and Notarial Seal this 14-1/2 day of Otlo'au., 1996.

J;.. CW  
Notary Publi

Prizk d        j Wu



My Commission Expires: 4-::Z.,.00

County of Residence: |-| a rnA.|-|:-0'''

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) 595-2900.

## Exhibit "A"

A part of the Northwest Quarter, together with a part of the Southwest Quarter, of Section 2, Township 15 North, Range 1 West, in Center Township, Hendricks County, Indiana, being more particularly described as follows:

Beginning at an iron pipe found marking the Southeast Corner of the Northwest Quarter of said Section 2, also being the Northeast Corner of the Southwest Quarter of said Section 2: THENCE North 89 degrees 55 minutes 24 seconds West along the North line of OLD FARM ADDITION - SECTION ELEVEN (11), as recorded in Plot 8001-13, Page 9 in the office of the Recorder of Hendricks County, Indiana, 133.02 reel (135.02 feet, previous description) to a 5/8" rebar set at the Northwest corner of said Old Farm Addition - Section Eleven: THENCE South 01 degrees 03 minutes 17 seconds West along the West line of said Old Farm Addition - Section Eleven 72.55 feet to a 5/8" rebar set on the North line of OLD FARM ADDITION - SECTION NINE (9) AMENDED, as recorded in Plat Book 10, Page 133, in the office of the Recorder of Hendricks County, Indiana; THENCE North 88 degrees 56 minutes 43 seconds West along said North line and its extension thereof 188.12 feet (188.00 feet, previous description) to a 5/8" rebar set on the East line of OLD FARM ADDITION - SECTION EIGHT (8) PART "A", as recorded in Plat Book 9, Page 70, in the office of the Recorder of Hendricks County, Indiana; THENCE North 01 degrees 09 minutes 05 seconds East along said East line 7.50 feet (6.95 feet, previous description) to a 5/8" rebar set; THENCE North 04 degrees 45 minutes 23 seconds West, continuing along said East line, 216.60 feet to a 5/8" rebar set; THENCE North 01 degrees 02 minutes 14 seconds East, continuing along said East line and the East line of OLD FARM ADDITION - SECTION EIGHT (8) C, as recorded in Plat Book 11, Page 2, in the office of the Recorder of Hendricks County, Indiana, and its extension thereof 461.06 feet (461.02 feet, previous description) to a 5/8" rebar set; THENCE North 89 degrees 55 minutes 24 seconds West, parallel with the North line of Old Farm Addition - Section Eight C, also being on the North line of OLD FARM ADDITION - SECTION SEVEN (7), as recorded in Plat Book 9, Page 32, in the office of the Recorder of Hendricks County, Indiana, and its extension thereof 894.00 feet to a 5/8" rebar set at the Southeast corner of OLD FARM ADDITION - SECTION TEN (10) A, as recorded in Plat Book 12, Page 6, in the office of the Recorder of Hendricks County, Indiana; THENCE North 00 degrees 04 minutes 36 seconds East along the easterly boundary of Old Farm Addition - Section 10 A 162.46 feet to a 5/8" rebar set; THENCE North 89 degrees 55 minutes 24

seconds West continuing along said easterly boundary 40.00 feet to a 5/8" rebar set; THENCE North 02 degrees 03 minutes 11 seconds East continuing along said easterly boundary 154.08 feet to a 5/8" rebar set at the Northeast corner of Old Form Addition - Section 10 A; THENCE North 89 degrees 16 minutes 38 seconds West along the North line of Old Form Addition - Section 10 A 13.84 feet to a 5/8" rebar set; THENCE North 01 degrees 27 minutes 43 seconds East 420.56 feet to a 5/8" rebar set on the North line of the Southeast Quarter of the Northwest Quarter of aforesaid Section 2; THENCE South 89 degrees 12 minutes 56 seconds East along said North line 1286.90 feet to a 5/8" rebar set at the Northeast corner of said quarter-quarter section; THENCE South 01 degrees 00 minutes 28 seconds West along the East line of the Northwest Quarter of said Section 2 a distance of 1336.31 feet to the Point of Beginning. Containing 26.47 acres, more or less.

Excepting a part of the Northwest Quarter, of Section 2, Township 15 North, Range 1 East, in Center Township, Hendricks County, Indiana, being more particularly described as follows:

Beginning at the Northwest corner of the above described real estate, thence South 89 degrees 12 minutes 56 seconds East 322.29 feet to a 5/8" rebar set; thence South 00 degrees 04 minutes 36 seconds West 413.00 feet to a 5/8" rebar set; thence South 89 degrees 55 minutes 24 seconds East 175.05 feet to a 5/8" rebar set; thence South 80 degrees 42 minutes 02 seconds East 116.51 feet to a rebar set; thence South 89 degrees 55 minutes 24 seconds East 48.25 feet to a 5/8" rebar set; thence South 00 degrees 04 minutes 36 seconds West 116.33 feet to a 5/8" rebar set; thence South 89 degrees 55 minutes 24 seconds East 67.97 feet to a 5/8" rebar set; thence South 00 degrees 04 minutes 36 seconds West 185.00 feet to a 5/8" rebar set; thence North 89 degrees 55 minutes 24 seconds West 690.19 feet to a 5/8" rebar set; thence North 00 degrees 04 minutes 36 seconds East 162.46 feet to a 5/8" rebar set; thence North 89 degrees 55 minutes 24 seconds West 10.00 feet to a 5/8" rebar set; thence North 02 degrees 03 minutes 11 seconds East 154.08 feet to a 5/8" rebar set; thence North 89 degrees 16 minutes 38 seconds West 13.84 feet to a 5/8" rebar set; thence North 01 degrees 27 minutes 43 seconds East 420.56 feet to the point of beginning. Containing 8.07 Acres

The basis or bearings for this survey is an assumed bearing or South 01 degrees 00 minutes 28 seconds West along the East line of the Northwest Quarter of said Section 2.

**COPY**

**FIRST SUPPLEMENT TO  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF OLD FARM SECTION IOC**

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This First Supplement is made this 30<sup>th</sup> day of IV... 1997, by Davis Homes, LLC, an Indiana limited liability company (the "Developer").

I. Developer is the owner of certain real estate more particularly described in Exhibit "A" attached hereto (the "Additional Real Estate").

2. Developer executed that certain Declaration of Covenants, Conditions and Restrictions of Old Farm Section IOC, on October 7, 1996 and recorded the same on December 26, 1996 as Instrument No. 96-26777, Book 158, Pg.'s 210 - 235 in the Office of the Recorder of Hendricks County, Indiana (the "Declaration").

3. Developer reserved in said Declaration the right from time to time, acting alone, to subject to the terms and provisions of the Declaration certain additional real estate located within the tracts adjacent to the Initial Real Estate (as defined in the Declaration) by execution and recordation in the Office of the Recorder of Hendricks County of a supplemental declaration so annexing all or any part of such real estate.

4. The Additional Real Estate constitutes a part of the tract adjacent to the Initial Real Estate.

NOW, THEREFORE, Declarant, in accordance with the rights reserved in the Declaration, makes this First Supplement as follows:

I. Definitions. All terms used in this First Supplement not otherwise defined in this First Supplement shall have the meanings set forth in the Declaration. Accordingly, the Additional Real Estate shall hereafter for all purposes be included in the definition of Real Estate in the Declaration, as the same may be amended or supplemented from time to time as therein provided.

2. First Supplement to Declaration. Developer hereby expressly declares that the Additional Real Estate, together with all improvements of every kind and nature whatsoever located thereon, shall be annexed to the Real Estate and made subject to the provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, and the Real Estate is hereby expanded to include the Additional Real Estate, all as if the same had originally been included in the Declaration. The Additional Real Estate shall be hereafter held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, improved and occupied subject to all of the provisions, agreements, covenants, conditions, restrictions, easements, assessments, charges and liens of the Declaration, as the same may be amended or supplemented from time to time as therein provided.

3. Effect of Covenants. All such provisions of the Declaration, as the same may be amended or supplemented from time to time as therein provided, shall be covenants running with the land and shall be binding upon, and inure to the benefit of Developer and any other person or entity having any right, title or interest in the Real Estate or any part thereof.

4. Declaration Continuous. Except as expressly supplemented by this First Supplement, the Declaration shall continue unchanged and in full force and effect.

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

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

By: Davis Holding Corporation,  
manager-member

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

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MARION     )

Before me, a Notary Public in and for the State of Indiana, personally appeared Christopher R. White, Vice President of Davis Holding Corporation, who acknowledged the execution of the foregoing First Supplement to Declaration of Covenants, Conditions and Restrictions of Old Farm Section 10C.

WITNESS my hand and Notarial Seal this 30th day of July, 1997.

Li-Ching Wu  
Notary Public

Li-Ching Wu  
Printed Name

My Commission Expires: 4-2,-00

Residing in 0.00 County



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)595-2900

## Exhibit "A"

### Old Farm Section 10D

A part of the Northwest Quarter of Section 2, Township 15 North, Range 1 West, in Center Township, Hendricks County, Indiana, being more particularly described as follows:

Beginning at the Southeast Corner of said Northwest Quarter; thence North 01 degrees 00 minutes 28 seconds East along the East line of OLD FARM SECTION 10 C (10 C), as recorded in Plot Cabinet 4, Slide 52, Pages 1 & 2 in the Office of the Recorder of Hendricks County, Indiana, (said East line also being the East line of the said Northwest Quarter of Section 2) Recorder of Hendricks County, Indiana, 1336.31 feet to a 5/8" rebar set at the Northeast corner of said Old Farm Section 10 C; thence North 89 degrees 12 minutes 56 seconds **West** along the North line of said Old Farm Section 10 C 964.61 feet to a 5/8" rebar set at the Northwest corner of said Old Farm Section 10 C and to the POINT OF BEGINNING of this description; thence South 00 degrees 04 minutes 36 seconds West 413.06 feet to a 5/8" rebar set; thence South 89 degrees 55 minutes 24 seconds East 175.05 feet to a 5/8" rebar set; thence South 80 degrees 42 minutes 02 seconds East 116.51 feet to a 5/8" rebar set; thence South 89 degrees 55 minutes 24 seconds East 48.25 feet to a 5/8" rebar set; thence South 00 degrees 04 minutes 36 seconds West 116.33 feet to a 5/8" rebar set; thence South 89 degrees 55 minutes 24 seconds East 67.97 feet to a 5/8" rebar set; thence South 00 degrees 04 minutes 36 seconds West 185.00 feet to a 5/8" rebar set; thence North 89 degrees 55 minutes 24 seconds West 690.19 feet to a 5/8" rebar set; thence North 00 degrees 04 minutes 36 seconds East 162.46 feet to a 5/8" rebar set; thence North 89 degrees 55 minutes 24 seconds West 40.00 feet to a 5/8" rebar set; thence North 02 degrees 01 minutes 11 seconds East 154.08 feet to a 5/8" rebar set; thence North 89 degrees 16 minutes 38 seconds West 13.84 feet to a 5/8" rebar set; thence North 01 degrees 27 minutes 41 seconds East 420.126 feet to a 5/8" rebar set; thence North 89 degrees 12 minutes 56 seconds East 322.29 feet to the POINT OF BEGINNING containing 6.07 acres, more or less and subject to all Restrictions, Easements and Right-of-Ways of record.