

9560994

PLAT COVENANTS AND RESTRICTIONS

*Mary P. Clark*  
RECORDER  
HAMILTON CO., IN

95 NOV 15 PM 12: 04

SHELBORNE GREENE

SECTION 6 (ORCHARD)

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 Shelborne Greene, Section 6, which is filed of record Nov. 15, 1995, in the office of the Recorder of Hamilton County, Indiana (the "Plat") and desires in the Plat to subject the Real Estate to the provisions of these Plat Covenants and Restrictions. The subdivision created by the Plat (the "Subdivision") is to be known and designated officially as "Shelborne Greene, Section 6" but may also be known as part of "The Orchard at Shelborne Greene". 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 Shelborne Greene, dated October 25, 1995 and recorded on Nov 15, 1995 as Instrument No. 9560988, in the office of the Recorder of Hamilton County, Indiana, as the same may be amended or supplemented from time to time as therein provided (the "Declaration"), and to the rights, powers, duties and obligations of the Shelborne Greene 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 in the Subdivision, the following covenants and restrictions, in addition to those set forth in the Declaration, are hereby imposed upon the Real Estate:

1. PUBLIC RIGHT OF WAY. The rights-of-way of the streets as shown on the Plat, if not heretofore dedicated to the public, are hereby dedicated to the public for use as a public right-of-way.
2. COMMON AREAS. There are areas of ground on the Plat marked "Common Area". Developer hereby declares, creates and grants a non-exclusive easement in favor of each Owner for the use and enjoyment of the Common Areas, subject to the conditions and restrictions contained in the Declaration. Maintenance of Common Area shall be performed by the Association as provided in the Declaration.
3. UTILITY, DRAINAGE AND SEWER EASEMENTS. There are areas of ground on the Plat marked "Utility Easements, Drainage Easements and 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 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 Hamilton County Drainage Board 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 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 Hamilton County Drainage Board and prior written approval of the Developer. The Sewer Easements are hereby created and reserved for the use of the Clay Township Regional Waste District 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 and related manholes at ground level. The delineation of the Utility, Drainage and 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 by or with the consent of the parties referred to above, no structures or improvements, including without limitation decks, fences, patios or walkways, shall be erected or maintained upon said easements.

4. LANDSCAPE EASEMENTS. There are areas of ground on the Plat marked "Landscape Easements" which are hereby created and reserved (i) for the use of the Developer during the Development Period for access to and the installation, maintenance and replacement of foliage, landscaping, screening materials, entrance walls, lighting, posts, fencing, irrigation, signs and other improvements and (ii) for the use of the Association for access to and the installation, maintenance and replacement of foliage, landscaping, screening materials, entrance walls, lighting, posts, fencing, irrigation, signs and other improvements. Except as installed by Developer or installed and maintained by the Association or with the prior written consent of the Architectural Review Committee, no structure or improvements, including without limitation decks, fences, patios or walkways, shall be erected or maintained in or upon said Landscape Easements. Areas comprising landscaped median islands located in boulevard streets near the entrances to the Subdivision, though part of the dedicated right-of-way, shall be treated by the Association for maintenance purposes as though such areas were shown on the Plat as Landscape Easements.

5. NON-ACCESS EASEMENTS. There are areas of ground on the Plat marked "Non-Access Easements". Such Non-Access Easements are hereby created and reserved to prohibit vehicular access to any Lot on and over the Non-Access Easement by way of a road or driveway.

6. BUILDING LOCATION - FRONT, BACK AND SIDE YARD REQUIREMENTS. Building lines are established on the Plat. No building shall be erected or maintained between said setback lines and the front, rear or side lot line (as the case may be) of a Lot. The setback lines may vary in depth in excess of the minimum as designated on the Plat. Except as otherwise shown on the Plat, the minimum front yard setback shall be twenty-five (25) feet. Except as otherwise shown on the Plat, the minimum rear yard setback shall be twenty (20) feet. The minimum side yard setback shall be five (5) feet, with a minimum aggregate distance between residences of ten (10) feet (except for building appendages not exceeding 2 1/2 feet by 6 feet in order to accommodate such items as air-conditioners, heat pumps or fireplaces).
7. RESIDENTIAL UNIT SIZE AND OTHER REQUIREMENTS. No Residence Unit constructed on a Lot shall have less than Twelve Hundred (1200) square feet of total living area, exclusive of garages, carports and open porches. Each Residence Unit shall include an attached two-car (or larger) enclosed garage.  
  
The maximum height of any Residence Unit constructed on a Lot shall be twenty-five (25) feet measured from finished grade to the underside of the eave line.
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. No building shall be erected, placed or permitted to remain on any Lot other than one detached single-family Residence Unit not to exceed two and a half (2 1/2) stories in height and permanently attached residential accessory buildings. Any garage, tool shed, storage building or any other attached building erected or used as an accessory building to a Residence Unit shall be of a permanent type of construction with a permanent foundation and shall conform to the general architecture and appearance of such Residence Unit.
9. ACCESSORY AND TEMPORARY BUILDINGS. No trailers, shacks, outhouses or detached or unenclosed storage sheds, tool sheds or accessory buildings of any kind shall be erected or situated on any Lot in the Subdivision, except those used by the Developer or by a builder during the construction of a Residence Unit, which temporary construction structures shall be removed upon completion of construction of the Subdivision or Residence Unit, as the case may be.
10. TEMPORARY RESIDENCE. No trailer, camper, motor home, truck, shack, tent, boat, recreational vehicle, basement, garage or outbuilding may be used at any time as a residence, temporary or permanent; nor may any structure of a temporary character be used as a residence.
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, commercial 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 repairs 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 property 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 shall be on an individual basis, Lot by Lot. The Subdivision shall not contain dumpsters or other forms of general or common trash accumulation except to facilitate development and home 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. Individual water systems installed for ancillary or auxiliary purposes shall be permitted by these restrictions if otherwise permitted by law and applicable rules and regulations governing the construction or use thereof; however, all proposed uses of geothermal water systems must initially receive approval from the Architectural Review Committee before being allowed to be constructed. Geothermal heat pumps shall be of the closed-loop type only.
18. DITCHES AND SWALES. All Owners 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 such drains shall be discharges directly to the ground surface.

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.

27. VIOLATION. Violation or threatened violation of these covenants and restrictions shall be grounds for an action by the Developer, the Association or any person or entity having any right, title or interest in any portion of the Real Estate, and all persons or entities claiming under them, against the person or entity violating or threatening to violate any such covenants or restrictions. Available relief in any such action shall include recovery of damages for such violation, injunctive relief against any such violation or threatened violation, declaratory relief and the recovery of costs and attorneys reasonable fees incurred by any party successfully enforcing these covenants and restrictions; provided, however, that neither the Developer nor the Association shall be liable for damages of any kind to any person for failing to enforce such covenants or restrictions.
28. CARMEL PLAN COMMISSION. The Carmel Plan Commission, its successors and assigns shall have no right, power or authority to enforce any covenants, restrictions or other limitations contained herein other than those covenants, restrictions or limitations that expressly run in favor of the Carmel Plan Commission; provided that nothing herein shall be construed to prevent the Carmel Plan Commission from enforcing any provisions of the Subdivision Control Ordinance, as amended, or any conditions attached to the Plan Commission's approval of the Plat.
29. AMENDMENT. These covenants and restrictions may be amended at any time by the then owners of at least sixty-seven percent (67%) of the Lots in all Subdivisions which are now or hereafter made subject to and annexed to the Declaration; provided, however, that until all of the Lots in such Subdivisions have been sold by Developer, any such amendment shall require the prior written approval of Developer. Each such amendment shall be evidenced by a written instrument, which instrument shall set forth facts sufficient to indicate compliance with this paragraph and shall be recorded in the office of the Recorder of Hamilton County, Indiana. No amendment which adversely affects the rights of a public utility shall be effective with respect to such public utility without its written consent thereto.
30. TERM. The foregoing 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 any portion of the Real Estate and on all persons or entities claiming under them, until December 31, 2015, and thereafter they shall continue automatically in effect unless terminated by a vote of a majority of the then Owners of the Lots contained in all Subdivisions which are then subject to the Declaration; provided, however, that no termination of said 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 25th day of October, 1995.

Davis Homes, LLC,

By: Davis Holding Corporation

By: 

C. Richard Davis  
Vice President

STATE OF INDIANA )  
                          )SS:  
COUNTY OF MARION)

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

Witness my signature and Notarial Seal this 25th day of October, 1995.

Li-Ching Wai  
Notary Public

Li-Ching Wai  
Printed

My commission expires:

4-21-96

I am a resident of  
Hamilton County, Indiana.

This instrument was prepared by C. Richard Davis, Vice President of Davis Holding Corporation, 3755 East 82nd Street, Suite 120, Indianapolis, Indiana 46240.

## LAND DESCRIPTION

Part of Section 8, Township 17 North, Range 3 East in Hamilton County, Indiana, being more particularly described as follows:

Beginning at a railroad spike, 3 inches down, over a notch in the high point of a stone at the Southwest corner of the Southeast Quarter of said Section 8; thence on an assumed bearing of North 00 degrees 04 minutes 09 seconds West along the west line of said Southeast Quarter Section a distance of 1333.98 feet to a 5/8 inch rebar with yellow cap marked "Schneider Eng Firm #0001" at the Northwest corner of the Southwest Quarter of said Southeast Quarter Section; thence North 88 degrees 53 minutes 46 seconds East along the north line of said Quarter Quarter Section a distance of 706.08 feet; thence South 01 degrees 06 minutes 14 seconds East a distance of 172.06 feet; thence South 03 degrees 36 minutes 41 seconds West a distance of 155.77 feet; thence South 00 degrees 04 minutes 09 seconds East parallel with the west line of said Southeast Quarter a distance of 19.97 feet; thence North 88 degrees 48 minutes 00 seconds East a distance of 228.63 feet; thence North 65 degrees 00 minutes 00 seconds East a distance of 16.85 feet; thence South 27 degrees 56 minutes 47 seconds East a distance of 170.24 feet to a curve having a radius of 325.00 feet, the radius point of which bears North 27 degrees 56 minutes 47 seconds West; thence westerly along said curve an arc distance of 54.11 feet to a point which bears South 18 degrees 24 minutes 24 seconds East from said radius point; thence South 18 degrees 24 minutes 24 seconds East a distance of 100.00 feet; thence South 00 degrees 06 minutes 50 seconds West a distance of 305.44 feet; thence North 89 degrees 53 minutes 10 seconds West distance of 45.02 feet; thence South 00 degrees 06 minutes 50 seconds West a distance of 130.00 feet; thence South 89 degrees 07 minutes 09 seconds West a distance of 19.66 feet; thence South 03 degrees 52 minutes 51 seconds East a distance of 20.04 feet to the northeast corner of a tract of land described in a deed to Irons recorded as Instrument No. 8726398 in the Office of the Recorder of Hamilton County, Indiana; thence South 86 degrees 07 minutes 09 seconds West along the north line of said Iron Tract a distance of 330.88 feet to the northwest corner thereof; thence South 02 degrees 12 minutes 33 seconds East along the west line of said Irons tract a distance of 255.26 feet to a railroad spike on the south line of said Southeast Quarter Section; thence South 88 degrees 57 minutes 04 seconds West along said south line of the Southeast Quarter Section a distance of 619.07 feet to the Point of Beginning, containing 25.740 acres, more or less.