

#108-03

Filed September 15, 2005

St. Joseph County, Indiana

**PROTECTIVE RESTRICTIONS, COVENANTS
LIMITATIONS AND EASEMENTS**

FOR

“THE OAKS”

Garden Homes by E.L., Inc., owner and developer of lots numbered 1 through 46 of the Plat of The Oaks, in German Township, said plat being recorded in the Office of the Recorder of St. Joseph County, Indiana, on **September 15, 2005** as document number **108-03**. The undersigned hereby dedicates the following covenants, restrictions and easements, which shall pertain to lots numbered 1 through 46 of the Plat of The Oaks, from and after the recording of this document and until they expire under the terms hereof:

Recorded in **Instrument number 0542923**.

IN

St. Joseph County, Indiana

All the lots in said section (hereinafter sometimes referred to as "The Oaks" or "this subdivision") shall be subject to and impressed with the covenants, agreements, easements, restrictions, limitations and charges hereinafter set forth. They shall be considered a part of the conveyance of any lot in said Section without being written therein. The provisions herein contained are for the mutual benefit and protection of the owners, of any land or lots included in said Section, their respective legal representatives, heirs, successors, grantees, and assigns. The owner or owners, present or future, of any land or lot included in said Section shall be entitled to injunctive relief against any violation or attempted violation of the provisions hereof and also damages for any injuries resulting from any violation hereof. However, there shall be no right of reversion or forfeiture of title resulting from such violation. The restrictions and limitations imposed upon said Sections are as follows:

1. **ARCHITECTURAL CONTROL COMMITTEE**. In order to maintain harmonious structural design, no building for the principal use of residential dwelling may be erected on any lot, unless and until the plans and specifications therefor have been approved in writing by the The Oaks Architectural Control Committee. There is hereby created the The Oaks Architectural Control Committee which shall consist of three (3) persons appointed by Garden Homes by E.L., Inc.; herein-after referred to as the “Developer”, or its

successors and assigns who shall serve until they are removed by the Developer or have resigned. This committee may designate any one of its members to act on its behalf. In case of any vacancy on the Committee, the Developer shall appoint a replacement. The Committee shall have the authority to approve all plans and specifications for all structures to be erected in the subdivision. No construction of any structure shall be commenced until the Committee shall have issued its written approval. The decision of the Committee shall be entirely within its discretion. The authority of the Committee shall expire fifteen (15) years after the date of the recording of this plat.

2.(A) **LAND AND USE AND BUILDING TYPE**. No dwelling shall be erected, altered, placed, or permitted to remain on any lot other than one single-family dwelling not to exceed two and one-half (2 1/2) stories in height and a private garage for not more than three (3) cars. Exceptions may be made to this section only if the Architectural Control Committee unanimously approve them in writing.

(B) **HOME OCCUPATIONS**. No lot or lots shall be used for any purpose other than as a single-family residence, except that a home occupation, defined as follows, may be permitted: any use conducted entirely within the residence dwelling and participated in solely by a member of the immediate family residing in said residence, shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof and in connection with which there is:

- a) No sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a dwelling;
- b) No commodity is sold upon the premises;
- c) No person is employed other than a member of the immediate family residing on the premises;
- d) No mechanical equipment is used, provided that, in no event shall a barber shop, styling salon, beauty parlor, tea room, fortune-teller parlor, animal hospital, or any form of animal care or treatment such as dog trimming, be construed as a home occupation. Nothing in the above paragraphs shall stop builders' from staffing model homes during the construction period of the development.

3. **ARCHITECTURAL CONTROL**. No building or other structure shall be erected, constructed, placed, maintained, or altered on any lot, nor shall the natural topography or drainage of any lot be altered, until the construction plans for the structure or for the topographical alterations have been approved by the Architectural Control Committee. The plans must show floor plan, quality of construction, materials, outside colors to be used.. Two (2) sets of complete plans must be submitted. One (1) will be retained in the Developer's Office and one (1) will be returned to the builder. The Committee's approval or disapproval as required in these covenants shall be in writing. No

structure of any kind, which does not comply fully with such approved plans, shall be erected, constructed, placed or maintained upon any lot. In addition, no changes or deviations in or from such plans as approved shall be made without the Committee's prior written consent. Neither the Developer, the Architectural Control Committee, nor any member thereof, nor any of their respective heirs, personal representatives, successors, or assigns shall be liable to anyone because of any mistake in judgment, negligence, or nonfeasance arising out of or relating to the approval, disapproval, or failure to approve any plans so submitted, nor shall they, or any of them, be responsible or liable for any structural defects in such plans or in any building or structure erected according to such plans or any drainage problems resulting therefrom. Every person and entity who submits plans to the Architectural Control Committee agrees, by submission of such plans, that he or it will not bring any action or suit against the Committee or the Developer, to recover any damages against the Committee or the Developer to recover any damages or to require the Committee or the Developer to take, or refrain from taking, any action. Neither the submission of any complete sets of plans to the Developer's office for review by the Architectural Control Committee, nor the approval thereof by that Committee, shall be deemed to guarantee or require the actual construction of the building or structure therein described. No adjacent lot owner may claim any reliance upon the submission and/or approval of any such plans, the buildings, or structures described therein.

(A) **GARAGES**. All dwellings must have a full size attached garage which is capable of storing at least two (2) automobiles, but not to exceed space for three (3) automobiles.

4. **BUILDING LOCATION**. No building shall be located on any lot nearer to the right-of-way line than the minimum building setback lines as shown on the recorded Plat.

5. **EASEMENTS**. There are strips of ground variable in width, as shown on this Plat, and marked "easement", for the installation of water and sewer mains, poles, ducts, lines and wires, overland drainage flows subject at all times to the proper authorities and to the easement herein reserved. No permanent structures shall be erected or maintained upon said strip of land except as noted in paragraphs 6 and 7, regarding screening of non-access easements. No changes shall be made in the grading of any lot areas used as drainage swales as initially provided which would alter the flow of overland storm drainage runoff. However, owners of lots in this subdivision shall take their titles subject to the rights of the public utilities. Furthermore, any utility company in setting utility poles shall have the right to set anchor poles at any change of direction of their lines. Such anchor poles may be set on any lot line outside the easement.

6. **FENCES**. No fence shall be erected, placed, or altered on any lot nearer to any street than the rear of the building. Perimeter fencing shall not exceed six (6) feet high or a

privacy fence around an immediate patio of not more than six (6) feet. Both must conform to present architectural standards as set by the style of home thereon built and be approved by the Architectural Control Committee in writing, unless a variance from this fence requirement shall have been approved in writing by the Architectural Control Committee.

7. **NUISANCES**. No obnoxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance in the neighborhood.

8. **PROHIBITED STRUCTURES**. No trailer, modular home, manufactured home, prebuilt home, basement, tent, shack, garage, barn, outbuilding, or any structure of a temporary character shall be moved onto, assembled, or constructed on any lot and used at any time as a residence either temporarily or permanently.

9. **IN GROUND & ABOVE GROUND POOLS AND TENNIS COURTS**. Tennis courts may not be erected, built, or installed on any lot. In ground and above ground pools may be erected on any lot no nearer to any street than the rear of the building. All pools must have protective screening.

10. **DETACHED BUILDINGS**. The construction and placement of any detached storage or pet shelter structures to be used for the storage of lawn tools, toys, swimming pool apparatus, any other personal property, or for the shelter of pets must be of a quality construction. It must be maintained in attractive and neat appearance and blend with the established home and be submitted to the Architectural Control Committee for approval before beginning construction. The Architectural Control Committee shall have the authority to require protective screening around these structures. Approval for the construction of the structure must be obtained from the Architectural Control Committee as provided for in Paragraph 1.

11. **DRIVEWAYS**. No stone or cinder driveways shall be permitted. All driveways are to be a minimum of sixteen (16) feet wide and must be constructed of asphalt or concrete. If constructed of asphalt, the depth of the asphalt shall be at least three (3) inches thick. If constructed of concrete, the driveway shall be at least four (4) inches thick. Circular drives in front of homes (if any) may be a minimum of eight (8) feet wide.

12. **SIGNS**. No sign of any kind shall be displayed to the public view on any lot, except one sign of not more than five (5) square feet advertising the property for sale, rent, or a sign of any dimension used by a builder to advertise the property during the construction and sales period. There is reserved to the Developer, its successors, and assigns the right to construct signs as they desire in order to foster the promotion and effect sales of lots or structures in said development.

13. **ANIMALS.** No animals, birds, or fowl may be kept or maintained on any lot except dogs, cats and pet birds, which may be kept thereon in reasonable numbers as pets for the pleasure and use of the occupants. No animal may be kept or bred for any commercial purpose and all animals will have such care and restraint so as not to be obnoxious or offensive on account of noise, odor, or unsanitary conditions. No dog may be permitted to run at large, unless the dog is contained within a permitted dog run or fenced yard or unless the dog is accompanied by an attendant who shall have such dog firmly held by collar and leash which leash shall not exceed eight (8) feet in length. No person owning, harboring, or having in his possession any cat shall permit or allow such cat to run at large or in any yard or enclosure other than the yard or enclosure of the lot occupied or owned by such cat owner. No savage or dangerous animal will be kept on any lot. Owners will have full responsibility for any damage to persons or property caused by his or her pet. Pets must not be curbed near buildings, walkways, shrubbery or other public space. The owner is required to properly dispose of the waste his or her animal deposits on any property. No dog, which barks and can be heard on any frequent or continuing basis, will be kept in any residence or on any lot. The Association will have the right to require that any pets be registered with it and may adopt such additional reasonable rules and regulations with respect to animals, as it may deem proper.

14. **GARBAGE AND REFUSE DISPOSAL.** No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

15. **SIGHT AND DISTANCE AT INTERSECTIONS.** No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways 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 them at points twenty-five (25) feet from the intersection of the street lines; or, in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitations shall apply on any lot within (10) feet from the intersection of a street property line with the edge of a driveway. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

16. **COMPLETION DATE.** Any structure begun must be completed within a period of one (1) year from the date of beginning, or thereafter be completely removed. The side, front, and rear yards of each lot shall be planted with grass seed, sod, or ground cover, unless otherwise approved by the Architectural Control Committee, within one hundred and twenty (120) days after the structure is completed, or the structure is occupied as a home, whichever is earlier.

17. **SOLAR PANELS.** The Developer prior to construction must approve solar panel installation and location in writing.

18. **FUEL STORAGE TANKS.** All oil or fuel storage tanks must be installed underground or concealed within the main structure of the dwelling, basement or attached garage.

19. **LOT DIVISION.** There shall be no subdivision or sale of any lot by a homeowner for the purpose of building an additional dwelling.

20. **LIGHTING.** A dusk to dawn light (or gas light) of the type approved by the Architectural Control Committee shall be installed by the builder or lot owner on each lot in front of the front building setback line. If electric, post lights shall be equipped with automatic operators (electric eye) to provide light from sundown to dawn.

21. **RECREATIONAL VEHICLES.** Storage of boats, motor homes, trailers, and other recreational vehicles shall not be at a location nearer the front lot line than the minimum building setback line shown on the recorded plat. No vehicles or boats, of any type, moveable or immovable, may be parked on the street in the subdivision for a period longer than seven (7) consecutive days. No vehicles on blocks or without a current license plate shall be stored outside of an enclosed garage on any lot at any time.

22. **HOMEOWNERS ASSOCIATION.** The "The Oaks Homeowners Association, Inc.", hereinafter referred to as the "Association", which shall be an Indiana corporation, shall be created by the Developer acting on behalf of the owners and future owners of lots in this subdivision. The purpose of the "Association" is to manage and to support financially the retention basin maintenance, any entrance signage, and landscaping. The timing of the "Association" turn over to the property owners shall be at the sole discretion of the Developer. After the turn over by the Developer, the Association shall conduct a meeting at least once each year to organize itself and to elect its officers. The Association shall adopt by-laws for its government and may levy and collect dues. The Association shall have the authority to impose and collect annual assessments for the installation of street lighting and for the maintenance and improvement of the entrance area. The total of the dues and assessments levied against each lot may not exceed fifty-five dollars (\$55.00) per lot per year. The fifty-five dollars (\$55.00) annual limit may be increased by either a majority vote of the members or by the Board of Directors. So long as any increase by the Board does not exceed the percentage increase in the Consumer Price Index from January 1, 2006 to January of the year the increased amount is to first be effective. The Consumer Price Index (All Items) for the United States published by the United States Department of Labor; the Board of Directors will be using the Bureau of Labor Statistics to determine the amount of any permissible increase. If that Index is changed so that the base year differs from that in effect when the term commences, the published Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor

Statistics. If that Index is discontinued or revised during the term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. Those assessments shall be levied equally on each lot in all Additions to and Sections of recorded Plat of The Oaks. Failure to pay said assessments or annual dues shall be a violation of these covenants and restrictions. Any such assessments or annual dues shall be billed by the Association to the owner of each lot during the month of January of each year and shall be due and payable within thirty (30) days. All lots in these Sections shall, from and after the recording of these restrictions, be subject to said annual dues and assessments. Said dues, assessments, including interest, costs of collection, and attorney's fees, if any, as hereinafter provided, shall be a lien in favor of the Association upon the lot. Against which such dues and assessments are charged until discharged by payment or released by the Association, which lien may, but need not, be enforced in the same manner as is provided in the mechanic's lien statutes of the State of Indiana. Notwithstanding anything to the contrary herein, the association need not file, record, or send any notice with respect to any lien or liens or bring suit thereon within any time specified in the mechanic's lien statutes of the State of Indiana to enforce the same. The Association may, but not need, publicly record such notices of undischarged liens arising hereunder as it deems appropriate and may, but need not bring a separate independent action in any court to enforce payment of, or to foreclose, the lien created hereunder. Provided further, that any person purchasing or dealing with said lot may rely upon a certificate signed by the President or Secretary of the Association. Showing the amount of such certificate and the Association shall not be entitled to enforce any lien for such charge accruing prior to the date of any such certificate unless the amount thereof is shown in the said certificate. The within above-described lien is subordinate to any first mortgage lien. The Association may also enforce the restrictions. Any past-due annual dues, assessments, or other charges assessable hereunder shall bear interest at the rate of eight percent (8%) per annum commencing thirty (30) days after same become due and with attorney's fees, and shall be due and payable without relief from valuation and appraisal laws. The Association may be formed for, and engage in, such other activities as may be beneficial to the lot owners, to the public at large, or which may qualify the Association as a "not-for-profit corporation or association", as defined in the Internal Revenue Code. Until such time as the Association is created by the Developer, acting on behalf of the Association to be formed, shall be entitled to carry out the responsibilities assigned to, and enjoy and exercise the rights and powers granted to, the Association pursuant to these restrictions. Provided, however, that the total of such dues and assessments levied by the Developer in such capacity against each lot shall not exceed fifty-five dollars (\$55.00) per lot per year. So long as the Association has not been created and the Developer is acting in such capacity on behalf of the Association to be formed. There shall be no assessment on any lot as long as the developer owns such lot.

23. **ANTENNAS.** No exposed or exterior radio or television transmission or receiving antennas, dishes over 18" in diameter or other devices will be erected, placed, or

maintained on any lot. Any waiver of these restrictions will not constitute a waiver as to other lots or lines or antennas.

24. **UTILITIES.** All public utility services, either in the streets or on any lots, including by not limited to electric, gas, telephone service, and cable television, shall be located underground, and shall not be visible. All street or lot lighting shall be situated on posts with no lines visible.

25. **FIRES.** No fire shall be permitted to burn upon any street or roadway in this subdivision.

26. **AMENDMENT OF COVENANTS.** It is expressly provided that the Developer, its successors, or assigns, shall have the exclusive right for a period of five (5) years from the date of recording of this Plat to amend any or all of the restrictions or covenants herein contained; except that the Developer, its successors or assigns, shall not during such five-year period, increase the fifty-five dollar (\$55.00) limitation on the total dues and assessments which may be levied annually by the The Oaks Homeowners Association, Inc., against any lot. Such amendment shall be evidenced by the recording of a written amendment signed and recorded in the Office of the Recorder of St. Joseph County and shall become effective upon such recording. This shall include the right to waive any part of the restrictions or conditions as to any particular lot. After five (5) years from the date of recording of this Plat, these restrictions and Limitations, including that provision of paragraph 22 which places a fifty-five dollars (\$55.00) maximum on the total dues and assessments which may be levied annually by the The Oaks Homeowners Association, Inc., against any lot, may be amended at any time by the recording of such amendment executed by the owners of the fee title of not less than seventy-five percent (75%) of the lots in the subdivision.

27. **DURATION OF COVENANTS.** These covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January, 2016, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless by a vote of the then owners of the fee title of not less than seventy-five percent (75%) of the lots covered by these covenants and restrictions, it is agreed to change such covenants and restrictions in whole or in part.

28. **SEPARABILITY OF COVENANTS.** Invalidation of any one of the covenants or restrictions by judgment of a Court or competent jurisdiction shall in no way affect any of the other covenants or restrictions and all other provisions of these covenants and restrictions shall remain in full force and effect.

29. **ENFORCEMENT OF COVENANTS.** The right to enforce these provisions by injunction, together with the right to cause the removal by due process law of any structure, is hereby vested in each owner of a lot in The Oaks, and in The Oaks Homeowners

Association, Inc., its successors and assigns. These covenants and restrictions may all be enforced by a civil action for damages and by any other appropriate remedy at law or in equity. If any person or persons shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons vested with the title to any of the lots herein before described, the The Oaks Homeowners Association, Inc., its successors and assigns, or the Developer, to proceed either in law or in equity, against such person or persons violating or attempting to violate any such covenants, and to enjoin them from so doing, to recover damages for such violation and to seek all other appropriate relief. In the event that the The Oaks Homeowners Association, Inc. or the Developer should employ counsel to enforce any of the foregoing covenants and restrictions, all costs incurred in such enforcement, including reasonable attorneys fees, shall be paid by the owner of such lot or lots against whom such enforcement action is brought, and The The Oaks Homeowners Association, Inc. or the Developer, as the case may be, shall have a lien upon such lot or lots to secure such lot owner's payment of all such costs, which lien may be enforced in the same manner as is provided in Paragraph 22 of these restrictions.

30. **EFFECTIVE DATE** These Restrictions and Covenants shall be deemed to be attached to and shall be considered a part of the Plat of The Oaks, Section , and shall become effective upon their recording in the Office of the Recorder of St. Joseph County, Indiana.

Garden Homes by E.L., Inc.

By: _____
 E. Leroy Yoder
 President

STATE OF INDIANA)
) SS:
 St. Joseph County)

Before me, the undersigned, a Notary Public in and for said County and State, this _____th Day of _____, 2005 personally appeared E. Leroy Yoder, and acknowledge the execution of the above and foregoing instrument to their voluntary act and deed.

WITNESS my hand and Notarial Seal.

Victoria L. Miller
Notary Public, and resident of
St. Joseph County, Indiana.

My Commission Expires:

February 22, 2008

Prepared by: E. Leroy Yoder