

VALLEY HEIGHTS SUBDIVISION, COVENANTS AND RESTRICTIONS

The following is the declaratory statement of dedication, limitations, restrictions and covenants for all purchasers, their heirs, successors and assigns, of lots in **VALLEY HEIGHTS SUBDIVISION, SECTION 3**, a residential subdivision, lying in the Southeast Quarter of Section 10, Township 13 North, Range 2 East, Madison Township, Morgan County, Indiana, and shall take title subject to and be bound by the following:

1. Architectural Control Committee. An Architectural Control Committee shall review and approve all plans for the construction of residential dwelling houses, accessory buildings and all other structures to promote harmony of design and compatibility with existing structures. Only Developer approved builders are allowed to construct dwelling in this subdivision. Lot owners shall obtain an approved list of builders from the Developer. The committee also shall approve any technical variation or exception from any construction requirements. The committee shall approve soil and erosion control guidelines which must be adhered to by the lot owners, their builders, contractors and subcontractors. The committee shall initially consist of the Developer or Developers's representative. The developer (Roger D. Davee and his successors) shall make all appointments until all lots are sold in all present and subsequent sections of Valley Heights Subdivision. Thereafter, the committee shall consist of three (3) resident owners, which shall be elected annually by all lot owners.
2. Architectural Design. All buildings, walls, fences and all other structures are subject to the approval of the Architectural Control Committee. No building, wall, fence or other structure shall be constructed, erected, placed or altered in this subdivision until the location plan, building plans, and specifications have been submitted to the Architectural Control Committee which will approve or disapprove the submittals as to conformity with the exterior design, quality and aesthetic appearance of structure already existing and for conformity with surface, drainage requirements, first floor area, external construction, destruction of trees and other vegetation and any other such matter as may affect the environment or ecology of the subdivision.

In the event the committee, or its designated representative, fails to approve or disapprove any plans and specifications within thirty (30) days after such plans and specifications have been submitted to it, then such plans and specifications will be considered approved.

3. Land Use. All lots herein are for residential use only, limited to one single family dwelling per lot.
4. Building Location. No building shall be located on any lot nearer to the front lot line than the setback line shown on the subdivision plat which setback has been approved by the Morgan County Commissioners. No building shall be located on any lot nearer to the side and rear lot line than ten (10) feet. For the purpose of this covenant, eaves, steps and open porches shall not be considered a part of the building; provided, however, that this shall not be constructed to permit any portion of any building on any lot to encroach upon any other lot unless the other lot, or part thereof, is owned by the same owner. The division of a lot for the purpose of creating an additional building site is prohibited.
5. Dwelling Size. No dwelling shall exceed three (3) stories in height. An attached private garage for at least two (2) cars must be included. The ground floor of the dwelling structure, exclusive of porches, basements and garages, shall not be less than one-thousand eight hundred (1800) square feet for a one-story dwelling nor less than one-thousand four hundred-fifty (1450) square feet for a dwelling of more than one-story, with total living area not to be less than one-thousand eight hundred (1800) square feet.
6. Construction requirements.
 - a. Overhang (eaves) shall be a minimum of twelve (12) inches, excluding any exterior finish.
 - b. If the roof is a hip type then a minimum of 6/12 pitch shall be used. If the roof is to be a gable type then a minimum of 8/12 pitch shall be used.
 - c. Exterior of the first story of all dwellings shall be full brick or stone. Soffit, fascia, and gable materials must be cedar wood and colors shall be approved by the Architectural Control Committee. No vinyl siding, fascia, gable or soffit are allowed. No log cabins, modular or mobile homes will be permitted. All dwellings must be built on a crawl space or basement. No slab construction will be allowed.

d. After construction, all lots shall be graded and landscaped. The grading shall be so as to provide positive drainage from the house as constructed. To insure positive drainage the ground shall slope away from the dwelling a minimum of one (1) inch per foot, for the first six (6) feet outside the perimeter of the foundation, or as determined by the Architectural Control Committee, considering specific lot characteristics.

e. All driveways are to be of concrete four (4) inches thick or two (2) inches of asphalt on 6" of compacted crushed stone. The location shall be approved by the Architectural Control Committee. Driveways must be maintained in good repair by the lot owners.

f. All construction, finish grading, sidewalks and landscaping shall be completed within six (6) months of the start of construction, acts of God and unusual weather or destruction of work in progress excepting.

g. All owners and their builders/contractors shall be responsible for and maintain the job site in a reasonable, sightly order, containing all trash and debris within the lot and properly disposed of or removed. Owner and their builder/contractors shall register and obtain from the Architectural Control Committee a copy of Valley Heights Subdivision plat and covenants and restrictions.

h. All owners and their builders/contractors shall be responsible for and repair or restore any damage during construction, whether or not inadvertent or unavoidable, including but not limited to streets, drainage area, utilities or other improvements.

i. All owners shall be fully responsible for providing proper erosion control on their lot. In the event proper erosion control is not maintained, the lot owner shall be responsible for any and all damages incurred by the Developers (Roger D. Davee and his successors) and the Home Owners Association. The Developer and the Architectural Control Committee shall have the right to notify the lot owner of specific erosion problems and to assess damages from this. The lot owner is responsible for the acts of any builder, contractor or subcontractor done work on the owner lot. Standards for erosion control shall be set by the Architectural Control Committee.

j. All lot owners, for the good of the community, will maintain their lots in good condition to the edge of the street.

7. **Utility Easements.** Areas designated as utility easements on this plat are dedicated as easements for the installation and maintenance of public utilities reasonably and conveniently required. Such as lines, ducts, gas or water mains or sewer mains and laterals, electric lines, telephone lines and cable television lines, not including transportation and transmission company lines. No structures shall be erected on or maintained within such areas. Maintenance of the easement area is the responsibility of the owner.

8. **Drainage Easements.** Areas designated as drainage easements on the plat are dedicated as easements for drainage of water. No structure shall be erected or maintained within such areas and drainage shall not be restricted. Maintenance is the responsibility of the lot owner.

9. **Vehicle Parking.** No unlicensed or inoperative vehicles of any kind including boats, trucks, campers, trailers, recreational vehicles, motorcycles, or similar vehicles shall be parked on any road, street, private driveway, or lot. Operating and licensed vehicles (of the kind and nature described above) may be parked on a lot provided it is screened in such a way that it is not visible to the occupants of the adjacent lots. No vehicle of any kind shall be parked on the street except for a reasonable length of time. The Architectural Control Committee shall determine what is acceptable screening and shall determine what is a reasonable length of time.

10. **Storage and Refuse Disposal.** No outside storage of equipment, materials, supplies, debris and unlicensed or inoperative vehicles, (including recreational vehicles, boat, trailers, motorcycles or any other motorized or unmotorized equipment) shall be permitted. Trash, garbage or other wastes shall be kept in sanitary animal proof containers. All equipment for the storage of such materials shall be kept in a clean and sanitary condition. No incinerators or trash burning shall be allowed.

11. **Vacant Lot Maintenance.** Vacant lots shall be maintained per the following terms: No trash shall be allowed to accumulate or vegetation to grow in excess of twelve (12) inches in height. Unsold lots shall be mowed and maintained by the developer. If sold lots are not mowed and maintained, the developer shall have the option to mow, or maintain the property, by removing trash or debris and charge the owner a reasonable fee.

12. **Business Use.** No mercantile or business establishment of any kind or character shall be erected, altered, permitted or maintained on any lot.

13. Auto Mechanics. Except for minor or routine repair and maintenance of the owners' personal vehicles, no welding, restoration, reconstruction, overhauling, painting or other type of auto mechanics, whether for hire or otherwise, shall be permitted.
14. Nuisance. No obnoxious or offensive activity shall be suffered or permitted to continue which may annoy or become a nuisance to a neighbor or the neighborhood, nor shall any unlawful act or activity be allowed whatsoever.
15. Storage Tanks. No bulk storage tanks of any kind will be allowed.
16. Utility/Storage Buildings. Utility or storage buildings must have a minimum area of 120 square feet and may not be larger than 320 square feet. Utility or storage buildings must be constructed to compliment the dwelling. Gazebo type structures will also be permitted. All utility, storage or gazebo structures must be approved by the Architectural Control Committee.
17. Fences. No fence shall be erected until approval is obtained from the Architectural Control Committee as to type, location and height. No fence shall be erected closer than the front of the dwelling structure except for open wood fences of a decorative type provided such fence has been approved by the Architectural Control Committee. All fences shall be maintained in good repair.
18. Animals. Lot owners shall not keep, breed or raise any animal for commercial purposes. Lot owners shall be allowed three (3) total of either dogs, cats, or other household pet. No lot owner shall be allowed to keep, breed or raise livestock, hogs or poultry. All household pets shall be confined to the owners property or on a leash accompanied by an adult.
19. Pools. No above ground type pool will be permitted.
20. Mailboxes. Architectural Control Committee shall specify and determine location of all mailboxes.
21. Basketball Goals. Type location of basketball goals are subject to approval by the Architectural Control Committee.

22. Signs. No signs of any kind shall be displayed to the public view on any lot except for one sign of not more than five (5) square feet advertising the property for sale or rent. No more than four (4) signs no larger than five (5) square feet shall be allowed by builder or others to advertise the property during construction; however, any sign required by law may be displayed during the construction period in addition to the permitted signs. This covenant has no application to marketing or promotional signs of the developer while lots are being sold.
23. Water Utility Requirements and Fees. All lot owners shall be required to tap on the water lines, excluding the Developer (Roger D. Davee and his successors) and to pay all required fees including a tap fee to the water utility company.
24. Dedication of Access Easement. The fifty (50) foot wide access easement, together with the forty (40) foot radius cul-de-sac, being shown as Davee Court on the subdivision plat, is dedicated to the various lot owners for access, drainage, utilities and mailbox installation. When the road (Davee Court) is taken into the Morgan County highway system the Owners of the lots in this subdivision understand and agree that the fifty foot wide easement and cul-de-sac shall become a dedicated right-of-way to the Morgan County Commissioners for public roadway, drainage and related uses.
25. Enforcement. Enforcement of the Valley Heights, covenants and restrictions set out in this agreement shall be by proceeding at law instituted by the Developer as shown on the plat of record, the owner of any lot of record or the Architectural Control Committee with any of these entities having the right to bring the action against a violating party. The restrictions shall remain in full force and effect and shall be binding on all parties and all persons claiming ownership of record for twenty-five years from date this plat is recorded, at which time such covenants shall be automatically extended for successive periods of ten years unless otherwise agreed by a majority of lot owners of this section. After the initial term, the covenants and restrictions may also be amended by a majority vote of the lot owners and the owner will be allowed one vote for each lot owned. Invalidation of any covenant or restriction herein by judgment, court order or otherwise shall not affect any other covenant or restriction. Violation of a covenant or restriction shall not cause a forfeiture or reversion of title.

Any person, partnership, Corporation, or other legal entity violating or attempting to violate any covenant or restriction set out herein shall be subject to damages for the violation or the cost of any remedy to cure the violation including

attorney fees, court costs, and actual damage to the Developer, homeowner or Architectural Control Committee for the violation. Any violation or attempted violation may also be cured through injunctive relief to protect the respective owners of the other lots in the subdivision and the Developer. These covenants and restrictions shall incur to and be enforceable on any single family dwelling unit and any judgment for cost on account of the legal action brought to enforce said restrictions or any additional loss of time by the Developer or other expense in bringing the legal action including all attorney fees for the plaintiff's attorney and other trial fees and appellate fees, all shall be attached to and to be a lien upon any real estate owned by the defendant in this subdivision in the event of an adverse judgment in favor of the plaintiff and against the defendant lot owner. Included in the damages which shall be recoverable under this section to the Developer, other lot owners and the Architectural Control Committee, will be the monies expended by the Developer, lot owners or Architectural Control Committee incurring the violation or time and expenses which accrue in bringing an actin to cure the violation.

ASSOCIATION

All of the owners of the Real Estate, whether legal or equitable, shall be members of an Association (which can be unincorporated or incorporated at the discretion of the membership) such association to be known as the Valley Heights Subdivision Homeowner's Association.

The purpose of the association and all assessments levied by the association shall be for the purpose of promoting the preservation and conservation of the environment of the subdivision, for promoting recreation, health, safety and welfare of the residents of the subdivision and in particular for the improvements and maintenance of the properties, services and facilities devoted to the above purposes and related to the use and enjoyment of the common properties situated in the subdivision including, but not limited to the payment of taxes and insurance thereof and repair, replacement, maintenance of common areas including lighting, sidewalks and curbs and other common areas including the cost of labor, equipment, materials and management and supervision thereof.

1. Membership. The membership shall exist for each ownership of a lot in the subdivision. "Ownership" shall mean all owners, whether legal or equitable and regardless of the number or form of tenancy. Purchasers on contract "Equitable Owners" shall be entitled to the membership rather than the Developer. The Developer shall have one membership for each lot which is not sold.

2. Basis and Amount of Annual Assessments. The initial annual assessment shall be in the sum of \$75.00 per each lot sold by the developer, its representatives or assigns, regardless of whether the sale is by land contract or Deed. The payment shall be due on an annual basis starting on the 3rd day of August 1997 and continuing on this annual anniversary date the assessment shall be levied against each lot sold by the developer. The money shall be paid to the treasurer of the Valley Heights Subdivision Homeowner's Association. In no event shall any assessment or charge or special assessment provided below be levied against or be due from the developer.

3. Special Assessments for Capital Improvements. In addition to the annual assessment authorized by the above paragraph, the Association may levy in any assessment year on each lot sold by the developer, its representatives or assigns, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of common area improvements, including the necessary fixture and personal property related thereto, provided any such assessments shall add the affirmative approval of two-thirds of the votes of all voting members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at their listed address with the Association at least 30 days in advance of the meeting and shall set forth in the written notice the purpose of the meeting, assessment and the time and place of the meeting.

4. Change and Basis of Maximum Annual Assessments. The Association may increase or decrease the amount of its annual assessment as determined by an affirmative vote to two-thirds of the voting members who are voting in person or by proxy at a meeting duly called for this purpose. Written notice shall be sent to all members at the address given to the Association by the lot owner at least 30 days prior to the meeting with the notice stating the purpose of the meeting and the date and time and place of the meeting.

5. Quorum For Any Action. the Quorum required to change the amount of the annual assessments or for a special assessment for capital improvements shall consist of 60% of the membership. The quorum vote can be by written proxy or the membership appearing in person at the meeting. If the required quorum is not forth coming at any meeting, another meeting may be called, subject to the notice requirements set out for the purpose of the meeting. The same quorum vote is required for all decisions that require approval by the homeowners.

6. Duties of the Board of Directors. The management, affairs and policies of the Association shall be vested in the Board of Directors. The Board of Directors of the Association shall prepare a roster of the properties and assessments applicable thereto and at least 30 days in advance of such assessment due date. Such assessment roster shall be kept in the office of the Association or by the Secretary/Treasurer of the Association. Written notice of the assessment shall thereupon be sent to every owner subject to the assessment. The Association shall, upon demand at any time, furnish to any owner liable for said assessments certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Said certificates shall be conclusive evidence of payment of any assessment. If any assessment is not paid on the date when due, the assessments and cost of collection thereof as hereinafter provided, shall thereupon become a continuing lien against the property which shall bind such property in the hands of then owner, his heirs, devisee, personal representatives and assigns. If the assessment is not paid within 30 days after the due date, a delinquency fee of Ten Dollars shall be added thereto and from the date of the delinquency shall run at the rate of 12% per annum of both the assessment and any penalty.

The Association may bring an action at law to collect the penalty from the owner and shall be allowed to collect the assessment, delinquency fee, interest, cost of preparing and filing the complaint in the action, attorney fees, and all other costs assessed by the Court in the collection of said debt.

7. Priority. The priority of any lien herein shall be second and junior to any purchase money mortgage. Otherwise, such lien is entitled to the priority and dignity according to the date of recordation and operation of law. The Association shall have the right to file a lien against any property that has a delinquency in payment of its annual assessment or special assessment and the lien shall be placed against the property in the same name of the lot owner owing the assessment.

8. Exempt Property. The following property subject to this declaration shall be exempted from the assessments, charge and lien created by the Homeowner's Association: a. All properties to the extent of any easement or any other interest therein dedicated and accepted by the local public authority and devoted to public use; b. All common properties of the development; c. All properties owned by the developer, and all properties held by the developer for sale or resale including any lots which may have been re-acquired by the developer.

9. Term. The Association shall commence upon execution of this agreement for a term of twenty-five years and thereafter unless terminated by a vote of 75% of the members.

10. Creation. The initial directors of the Association shall be appointed by the Developer and shall consist of one person. the initial director shall serve until the first annual meeting, where upon the members shall elect three directors, one of which shall serve as President, the other as Vice-President and the other as Secretary/Treasurer of the Association. The initial director shall be elected as follows: For a one year term, one for a two year term, and one for a three year term with each of their successors being elected for a one year term.

11. Duties. The Director shall be responsible for setting all meetings, payment of all maintenance caused on common areas, maintaining the records for the Association, maintaining all financial records and accounting for all monies, for collection of dues, for entering into contracts for work in any common area, for recording liens, and taking care of all of the other business of the Association. The Director shall also be responsible for creating by-laws and rules for governing the Association and meetings of the Association.

The Secretary of the Association shall also maintain a minute book of all proceedings and keep all records of the Association meetings, business and financial dealings.

12. Annual Meetings. The annual meeting of the Association shall be at 7:00 P.M. on the last Wednesday in January unless otherwise established by the directors. The first annual meeting shall be in the year 1998. Notice of the time, date and place shall be mailed by regular mail to all owners of parcels in Valley Heights, Section 3, according to the records of the Morgan County Auditor. Other special meetings may be called by the directors or upon a request of 20% of the membership with said meeting to take place within 35 days from the request.



CHICAGO TITLE

The cul-de-sac shown on the plat of Valley Heights Subdivision Section 3 as recorded in Deed Record 408 Page 215, being an access and utility easement, shall have a radius of 50 feet, in place of the 40 foot radius shown on the plat. It is understood that the 50 foot radius cul-de-sac may be dedicated to the Morgan County Commissioners for roadway purposes as stated in item 24 of Valley Heights Subdivision Section 3 Covenants and Restrictions. Further, the 25 foot building line shown on the above referenced plat shall be measured from the 50 foot radius line of the cul-de-sac.



CHICAGO TITLE

DEVELOPERS CERTIFICATION AND DEDICATION

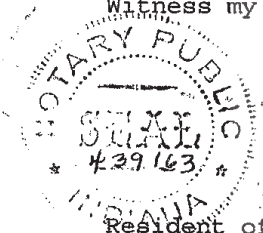
This declaratory statement of dedication, limitations, restrictions and covenants, to run with the land, shown hereon, is hereby so declared and executed by the undersigned, ROGER D. DAVEE, owner of said property, this 21ST day of APRIL, 1999.

Roger D. Davee
Roger D. Davee, Owner/Developer

State of Indiana)
)
County of Morgan)

Before me, the undersigned, a Notary Public, personally appeared Roger D. Davee, owner and developer of said property, and acknowledged the execution of this instrument to be his voluntary act and deed.

Witness my Hand and Seal this 21st day of April, 1999.



Lucille Sadler
Signed Notary Public
Lucille Sadler
Printed or Typed

Resident of Morgan County.

My Commission Expires: 9-3-2006 ®

PREPARED BY: ROSS HOLLOWAY

CHICAGO TITLE

RECEIVED FOR RECORD
April 21 1999
at 2:18 P.
Karen Brummett
MORGAN COUNTY RECORDER