

2004-017627

STATE OF INDIANA  
PORTER COUNTY  
FILED FOR RECORD

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LINDA D. TRINKLER  
RECORDER

**DECLARATION OF COVENANTS AND  
RESTRICTIONS FOR**

**ABERCROMBIE WOODS**



**THIS DECLARATION**, made this 1st day of April, 2002 by DTM Properties, LLC, a Limited Liability Company (hereinafter referred to as the "Developer").

**WITNESSETH:**

Whereas, the Developer is the owner of the real estate legally described herein and commonly known as Abercrombie Woods; and

Whereas, the Developer desires to develop Abercrombie Woods as a residential community; and

Whereas, the Developer desires to promote the orderly development of the Subdivision and to provide for the maintenance of common area by subjecting the real estate owned by the Developer to the covenants, restrictions, conditions, reservations, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of the subdivision and real estate comprising the development; and

Whereas, the Developer deems it desirable to subject the real estate to the said covenants, restrictions, conditions, reservation, easements, charges and liens for the mutual benefit of the real estate and under a general plan and scheme of development and improvement of the subdivision.

NOW THEREFORE, the Developer hereby declares that all of the platted lots and real estate located within the Subdivision as they become platted are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following covenants, restrictions, conditions, reservations, easements, charges and liens, all of which are declared and agreed to be in furtherance of a plan for the improvement of the real estate and sale of the said lots in the Subdivision, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and of each of the said lots situated therein.

**Article I**

**DEFINITIONS**

The following terms or words, when used in this Declaration, shall have the meanings attributed below:

**Section 1. "Association"** shall mean and refer to the Abercrombie Woods Property Owners Association, Inc., an Indiana nonprofit corporation.

**Section 2. "Board"** shall mean the Board of Directors of the Association.

**Section 3. "Committee"** shall mean the Architectural Control Committee for the Subdivision, which is created, and shall have the authority and duties as provided for herein.

**Section 4. "Common Area"** shall mean all real estate, whether in one or more separate parcels, which the Association or the Developer owns for the non-exclusive common use and enjoyment of the Owners of Lots shown on the recorded Subdivision plat or plats. Common Area specifically does not include the constructed wetland area for utilities or any other area or real estate which is reserved exclusively as a private utility easement pursuant to this Declaration.

**Section 5. "Developer"** shall mean DTM Properties, LLC, a Limited Liability Company, its successors and assigns, if any such successor or assignee acquires the undeveloped portion of Abercrombie Woods, from the Developer for the purpose of development.

**Section 6. "Lot"** shall mean and refer to any lot or other tract in the Subdivision, together with any and all improvements thereon, as shown on the plat or plats thereof and designated thereon with a number for identification on which a residential structure could be constructed, whether or not one has been constructed.

**Section 7. "Maintenance"** shall mean the exercise of reasonable care, including buildings, roads, easements of ingress and egress, drainage easements, water detention or retention easements, utility easements, parks, landscaping, lighting and other related improvements and fixtures in a condition comparable to their original condition.

**Section 8. "Member"** shall mean every person or entity holding membership in the Association.

**Section 9. "Owner"** shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Subdivision, including the Developer, and including contract sellers, but not including contract purchasers.

**Section 10. "Subdivision"** shall mean and refer to all such existing properties, and additions thereto and less and excepting any retractions therefrom, as are subject to this Declaration and any supplemental Declaration or Declarations, under the provisions of Article II hereof, and shall initially include the real property described in Article II, Section I.

**Section 11. "Sewer Utility"** shall mean the Town of Chesterton.

**Section 12. "Water Utility"** shall mean the Indiana American Water Co., Inc.

## **ARTICLE II**

### **PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO, DELETIONS THEREFROM**

**Section 1. Legal Description.** The real property which is and shall be held, transferred, sold, conveyed and occupied, subject to this Declaration, is located in Porter County, Indiana, and comprises all of the Lots, tracts and easements shown and/or platted within or upon the property legally described as follows:

Part of the Southeast Quarter of Section 9, Township 36 North, Range 6 West, Second Principal Meridian, Porter County, Indiana, and being more particularly described as follows:

A parcel of land in the Southeast Quarter of Section 9, Township 36 North, Range 6 West of the Second Principal Meridian, Porter County, Indiana, more particularly described as follows: Commencing at the Northeast corner of said Southeast Quarter; thence North 88°57'44" West along the North line of said Southeast Quarter 1319.73 feet to the Point of Beginning, (basis of bearings from Document Number 2002-040932 as Recorded in the Office of the Recorder of Porter County, Indiana is the North line of the Southeast Quarter of Section 9, Township 36 North, Range 6 West being North 88°57'44" West); thence South 00°45'47" West 745.00 feet; thence South 88°57'44" East 808.55 feet; thence South 00°51'12" West 1895.98 feet to the South line of said Southeast Quarter; thence North 89°00'08" West along said South line 805.56 feet; thence North 00°45'47" East 1320.82 feet to the South line of the Northwest Quarter of said Southeast Quarter; thence North 88°59'02" West 1317.90 feet to the West line of said Southeast Quarter; thence North 00°41'03" East along said West line 1321.24 feet to the North line of said Southeast Quarter; thence South 88°57'44" East along said North line 607.66 feet; thence South 00°40'58" West 150.00 feet; thence South 88°57'44" East 50.00 feet; thence North 00°40'58" East 150.00 feet to the North line of said Southeast Quarter; thence South 88°57'44" East along said North line 662.07 feet to the Point of Beginning. Containing 74.95 acres more-or-less.

**Section 2. Platting and Subdivision Restrictions.** The Developer shall be entitled at any time and from time to time, to plat, replat or vacate existing plattage of all or any part of the real estate subjected to this Declaration, and to file subdivision restrictions and/or amendments thereto with respect to any undeveloped portion, or portions of, or additions to the Subdivision.

**Section 3. Additional Real Estate.** Developer may, but shall have no obligation to, add at any time or from time to time to the scheme of this Declaration additional real estate, provided only that (a) any portion of the real estate from time to time added to the scheme of this Declaration shall be contiguous to property then subject to the scheme of this Declaration, (b) any portion of such real estate shall, at the time of addition to the scheme of this Declaration, be platted as single family residential lots, (c) said plat of added real estate shall dedicate, or commit to dedicate, the Common Area of said plat of real estate, and (d) upon addition of the real estate to the scheme of this Declaration, the owners of the property therein shall be and become subject to this Declaration, and shall have all privileges and obligations set forth in this Declaration, including assessment by the Association for their pro-rata share of Association expenses. The addition at any time or from time to time of all or any portion or portions of the real estate to the scheme of this Declaration shall be made and evidenced by filing in the Office of the Recorder of Porter County, Indiana, a supplementary Declaration with respect to that portion of real estate to be added. Developer reserves the right to so amend and supplement this Declaration without the consent or joinder of the Association or of any Owner and/or Mortgagee of land in the Subdivision.

**Section 4. Retractable Real Estate.** At the sole election of the Developer, all of the real estate specifically described in Section 1 of this Article and subject to this Declaration may be withdrawn from submission hereunder at one time, or portions at different times; provided, however that no real

estate may be withdrawn which has been developed. All Owners, mortgagees and the Association are hereby deemed to consent to the vacation, and waive all right to remonstrate hereto, of any portion of the plat of the Subdivision not developed in which the Developer has withdrawn from this Declaration.

### **Article III**

#### **PROPERTY RIGHTS**

**Section 1. Title to Common Area.** Developer may retain the legal title to the Common Area so long as it owns at least one Lot in the Subdivision. On or before conveyance by Developer of the last Lot which Developer owns in the Subdivision, Developer shall convey the conditions, limitations, reservations and easements of record; subject, however, to a reservation hereby perpetually reserved to the Developer, its successors and assigns, of the non-exclusive right to use and enjoy the common utility easements, easements of drainage, and ingress and egress easements for the benefit of real estate owned and to be owned by the Developer located on real estate which is contiguous to the Subdivision.

**Section 2. Reservation of Easements.** Developer does hereby reserve and grant the following easements within the Subdivision:

A. Subject to the conditions and stipulations set forth herein and those contained on the plat or plats of the Subdivision, public easements for the installation, construction, reconstruction, maintenance, repair, operation, and inspection of storm sewer, water, natural gas, drainage, electric, telephone, cable television or other public, quasi-public or private utility services are hereby granted and reserved as depicted and shown on the plat or plats of the Subdivision by diagonal cross-hatching and denoted as "Public Easement". Further, any additional easements for such purposes may be granted by the Developer and/or the Board at any time for the purpose of obtaining such utility service.

B. Subject to the conditions and stipulations set forth herein and those contained on the plat or plats of the Subdivision, private easements for itself and the utility or their designees, successors and assigns for the purpose of installation, construction, reconstruction, maintenance, repair, operation and inspection of sanitary sewers, including without limitation, the collection system, constructed wetlands, mound septic field and all related improvements, pipes, structures and facilities related thereto are hereby granted and reserved as depicted and shown on the plat or plats of the Subdivision by cross hatching and denoted as "Private Easement".

**Section 3. Owners' Easements of Enjoyment.** Every owner of a Lot shall have a non-exclusive common right and easement of enjoyment and ingress and egress in and to the Common Area which shall be appurtenant to and shall pass with the title to each Lot, subject to the following:

C. The right of the Association to take such steps as reasonably necessary to protect the above described properties against foreclosures;

D. All provisions of this Declaration, any plat thereof all or any part or parts of the property and the Articles and By-Laws of the Association.

E. Rules and Regulations governing the use and enjoyment of the Common Area adopted by the Association or the Sewer Utility or the Water Utility;

F. Restrictions contained on any and all plats of all or any part of the Common Area or filed separately with respect to all or any part or parts of the property; and

G. Easements for installation and maintenance of utilities and drainage facilities as shown on the recorded plat of the Subdivision and granted hereby. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage, interfere with the installation and maintenance of utilities, or which may damage, interfere with, impede, or change the direction of flow of drainage facilities in the easements. The easement areas shown on each Lot and all improvements thereon shall be continuously maintained by the Owner of such Lot, except for improvements for maintenance of which a public authority or utility company is responsible. No dwelling unit or other structure of any kind shall be built or erected or maintained on any such easement, reservation or right-of-way, and such easements, reservations and rights-of-way shall at all times be open and accessible to public and quasi-public utility corporations, their employees and contractors, and shall also be open and accessible to Developer, its successors and assigns of the right to use and enjoy the same nonexclusive easements, for the benefit of additional real estate owned or later acquired by Developer located or real estate contiguous to the Subdivision.

**Section 4. Right of Entry.** The Developer and the Association, through their duly authorized employees and contractors, shall have the right, after reasonable notice to the Owner thereof, to enter any Lot or tract of real estate at any reasonable hour on any day to perform such maintenance as may be authorized herein.

**Section 5. No Partition.** There shall be no judicial partition of the Common Area, nor shall Developer, or any Owner or any other person acquiring any interest in the Subdivision, or any part thereof, seek judicial partition thereof of the Common Area. However, nothing contained herein shall be construed to prevent judicial partition of any Lot owned in co-tenancy.

## **Article IV**

### **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section 1. Purpose of the Association.** The primary purpose of the Association shall be to insure high standards of maintenance and operation of all property and real estate in the Subdivision, including that property reserved by the Developer for the detention and management of storm water easements, to insure the provision of services and facilities of common benefit, and in general to maintain and promote the desired character of the Subdivision. In addition, the Association shall consider its primary purpose to manage and support financially all and any real estate owned by the Association, if any, as well as the storm drainage detention easements located within the Subdivision.

**Section 2. Creation of the Association.** As soon as is practicable following the recordation of this Declaration, Developer shall cause the Association to be incorporated as an Indiana non profit corporation, and to convey legal title to all real estate to the Association, if any. Prior to the appointment of the Board of Directors by the Developer, responsibility for the control of the Association shall remain the exclusive responsibility and obligation of the Developer or its designated agents and employees.

**Section 3. Membership.** Every owner, including the Developer, at all times so long as the Owner owns all or any part of the property subject to this Declaration, shall be a Member of the

Association. Membership shall be appurtenant to, and may not be separated from ownership of any Lot which is subject to assessment.

**Section 4. Classes and Voting.** The Association shall have such classes of membership, which classes shall have such voting rights, as are set forth in the Articles of Incorporation.

**Section 5. Board of Directors.** The Association shall have a Board of three (3) Directors who shall constitute the Board of Directors.

(a) The Directors and Officers of the Association shall not be liable to any Owner for any mistake of judgment or any acts or omissions made in good Faith by such Director or Officer. The Owners shall indemnify and hold harmless each of the Directors or Officers against all liability arising out of contracts made by such Directors or Officers on behalf of the Owners and Members of the Association, unless any such contracts shall have been made in bad faith or contrary to the provisions of this Declaration.

(b) The Board shall have the authority to and shall obtain comprehensive public liability insurance, as it shall deem desirable, and other liability insurance or insurances as it may deem appropriate in the circumstances. The premiums for such insurance shall be an expense to be paid by the Association.

**Section 6. Powers and Duties of the Association.** The Board of Directors of the Association shall have all of the powers set forth in its Articles of Incorporation, together with all other powers that belong to it by law in this Declaration:

(a) To own, maintain and otherwise manage the storm drainage detention basins located within the Subdivision and vacant and unimproved property, if any, and to do any and all other things necessary or desirable in the sole judgment of the Officers or Directors of the Association.

(b) To care for and maintain the landscaping, plantings and signs located within the Subdivision in a good and neat appearance.

(c) To make such improvements to the facilities under its control within the Subdivision, and to provide such other facilities and services as may be authorized from time to time by the affirmative vote of a simple majority of the Members of the Association acting in accordance with its constitution and Bylaws provided, however, that any such actions so authorized shall always be for the express purpose of keeping the Subdivision a highly desirable and exclusive residential community.

(d) Until such time as the Board of Directors is duly elected, all the powers and duties enumerated above shall be exercised exclusively by the Board of Directors, as appointed by the Developer. The Developer, at Developer's discretion may appoint Owners to serve on the Board of Directors at such time as it deems appropriate. The first elected Board shall be elected not later than one year after 100% of those Lots which have been subjected to this Declaration have been sold and title has been conveyed from the Developer to an Owner. All Owners of record who have been subjected to this Declaration shall be eligible to vote for said Board. All Directors of the first elected and all subsequent Boards of Directors of the Association shall be nominated and elected pursuant to the Bylaws of the Association.

## Article V.

### COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of Liens and Personal Obligation of Assessment.** The Developer, for each Lot owned by it within the Subdivision, hereby covenants and each Owner of any Lot (by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance) including any purchaser at a judicial sale, shall hereafter be deemed to covenant and agree to pay to the Association any annual assessments or charges, and any special assessments for capital improvements or major repair; such assessments to be fixed, established and collected from time to time as hereinafter provided. All such assessments, together with interest thereon from the due date at the rate of eighteen (18%) per cent per annum, and costs of collection thereof (including reasonable attorneys fees), shall be a charge on the real estate and shall be a continuing lien upon the Lot or Lots against which each such assessment is made, and shall also be the personal obligation of the Owner. No Owner except the Developer's inventory lots may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or by abandonment, or otherwise.

**Section 2. Purpose of Assessment.** The annual and special assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Subdivision, including but not limited to the following:

- A. Improvement, maintenance and repair of the Common Area;
- B. Water, sewer, garbage, electrical lighting, telephone, gas and other necessary Utility services for the Common Area;
- C. Maintenance and repair of all storm drains, drainage easements, storm water detention or retention easements, sanitary sewers, parks private roads, and easements shown on the plat or plats of the Subdivision recorded in the Office of the Recorder of Porter County, Indiana.-
- D. Routine maintenance and inspection of the Water Utility system and the Sewer Utility system and all related water and sewer lines located on each Lot and easements throughout the Subdivision.
- E. Fire insurance covering the full insurable replacement value of all improvements located on the Common Area with extended coverage.
- F. Liability insurance insuring the Association and the Board, as well as each Director in their individual capacity, against any and all liability to the public, to any Owner, or to the licensees, invitees, or tenants of any Owner arising out of their occupation and/or use of the Common Area. The policy limits shall be set by the Association and shall be reviewed at least annually and increased or decreased in the discretion of the Association;
- G. Worker's compensation insurance to the extent necessary to comply with the Indiana law and any other insurance deemed necessary by the Board;
- H. Acquisition of furnishings and equipment for the Common Area as may be determined by the Association, including without limitation, all equipment, furnishings, and personnel necessary or proper for use of the Common Area.
- I. Any other materials, supplies, equipment, labor, management, supervision, services, personnel, repairs, structural alterations, insurance, taxes, or assessments which the Association is

required to secure or pay pursuant to the terms of this Declaration, or by law, or which shall be necessary or proper in the opinion of the Board for the operation of the Common Area, for the benefit of the Owners, or for the enforcement of these restrictions.

**Section 3. Maximum Annual Assessments.** Except as hereinafter provided, the annual assessment, excluding any special assessment for capital improvements or major repairs, shall begin at \$185.00 (One Hundred Eighty-Five Dollars), per Lot, per annum. The Board shall fix the assessments, which shall be in amounts determined in accordance with the projected financial need; the assessment may be increased up to the cost of living index increase for any given year by the vote of two-thirds (2/3) of the members of the Board; the maximum amounts of the assessments may be increased or decreased from the amount hereinabove set forth.

**Section 4. Uniform Rate of Assessment.** All regular and special assessments shall be at a uniform rate for each Lot in the Subdivision without adjustment for size of Lots, number of residents or use or nonuse of the Common Area.

**Section 5. Special Assessments for Capital Improvements and Major Repairs.** In addition to the annual assessment, the Association may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, unexpected repair or replacement of a capital improvement as approved by the Board, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-thirds (2/3) of the 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 least thirty (30) days in advance, and shall set forth the purpose of the meeting.

**Section 6. Date of Commencement of Annual Assessments: Due Date.** The assessments for which provision is herein made shall commence on the first day of the month, or as fixed by the Board to be the date of commencement. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The due date of any assessment shall be fixed in the resolution authorizing such assessment and any such assessment shall be payable in advance in monthly installments unless such other periods are determined by the Board.

**Section 7. Duties of the Board of Directors.** The Board shall fix the date of commencement, and the amount of the assessment against each Lot for each assessment, at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by the Owners. Written notice of the assessment shall be sent to every Owner subject thereto not later than seven (7) days after fixing the date of commencement thereof. The Association shall, on demand, and for a reasonable charge, furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 8. Effect of Non-Payment of Assessment; The Lien, Personal Obligation, Remedies of Association.** If any assessment is not paid on the date when due, such assessment shall then become delinquent and shall, together with interest thereon, and the cost of collection thereof, become a continuing lien on the Lot or Lots against which such assessment is made that shall bind such Lot in the hands of the Owner, and the Owner's heirs, devisees, personal representatives and assigns, and shall also be continuing personal obligation of the Owner against whom the assessment is levied.



If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of eighteen (18%) percent per annum, and the Association may, at any time thereafter, bring an action to foreclose the lien against the Lot or Lots in like manner as a foreclosure of mortgage on real property and/or a suit on the personal obligation against the owner, and there shall be added to the amount of such assessment, the cost of any such action (including a reasonable attorney), and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the Court, together with the costs of the action.

**Section 9. Subordination to Lien of Mortgages.** The lien of the assessment for which provision is herein made shall be subordinate to the lien of any first mortgage to a bank, life insurance company, Federal or State savings and loan association, or real estate investment trust provided such mortgage is a purchase money mortgage. Such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, and in any other proceeding in lieu of foreclosure of such mortgage. No such sale or transfer or proceeding in lieu of foreclosure shall relieve any Lot or Lots from liability for any assessments thereafter becoming due, nor from the lien of any subsequent assessment. The written opinion of either the Developer or the Association that the lien is subordinate to a mortgage shall be dispositive of any question of subordination.

## Article VI

### EXTERIOR MAINTENANCE ASSESSMENT

**Section 1. Exterior Maintenance.** In addition to maintenance upon the Common Area, the Association may provide upon any Lot requiring same, when necessary in the opinion of the Board to preserve the beauty, quality and value of the neighborhood, maintenance, including paint, repair, roof repair and replacement, gutters, down-spouts, exterior building surfaces, and yard clean-up and/or maintenance, provided, however, that ten (10) days written notice must first be given to the Owner of any such Lot or Lots of the need of such clean-up and/or maintenance.

**Section 2. Assessment of Cost.** The cost of such maintenance shall be assessed against the Lot or Lots upon which such maintenance is performed, or, in the opinion of the Board, against the Lot or Lots benefiting from same. The assessment shall be apportioned among the lots involved in the manner determined to be appropriate by the Board. If no allocation is made, the assessment shall be uniformly assessed against all of the Lots in the affected area. The exterior maintenance assessments shall not be considered a part of the annual or special assessments. Any exterior maintenance assessment shall be a lien on the Lot or Lots and the personal obligation of the Owner and shall become due and payable in all respects, together with interest, reasonable attorney's fees, and cost of collection, as provided for the other assessments of the Association and shall be subordinate to mortgage liens as provided for herein-

**Section 3. Access at Reasonable Hours.** For the purpose of performing the maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or Lots or the exterior of any improvements thereon at reasonable hours any day except Sunday.

## Article VII

### ARCHITECTURAL CONTROL COMMITTEE

**Section 1. Power of Committee.** There is hereby created an Architectural Control Committee for the purpose of architectural and engineering control to secure and maintain an attractive, harmonious residential community. The Developer shall function as and grant all approvals and variances provided for herein until Developer conveys the last Lot which Developer owns in the Subdivision, except that Developer may elect to delegate and assign such duties and responsibilities to the Committee prior to that time. The Committee shall be composed of no less than three (3) individuals appointed by the Board to serve at the Board's pleasure. Two-thirds (2/3rds) of the Committee shall also be Members of the Association. A majority of members of the Committee shall constitute the decision of the Committee.

A. In General. No dwelling, house, building, structure or improvement of any type or kind shall be constructed or placed on any Lot in the Subdivision without the prior approval which shall be obtained only after written application has been made to the Committee by the Owner of the Lot requesting authorization from the Committee. Such written application shall be in the manner and form prescribed from time to time by the Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or 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. In addition, such plans and specifications shall show the finished grade elevation and location of proposed landscaping, together with any other material or information which the Committee may require. All plans and drawings required to be submitted to the Committee shall be drawn to a scale of  $1/4" = 1'$ , or to such other scale as the Committee may require. There shall also be submitted, where applicable, the permits or reports required elsewhere in these Restrictions. Exhibit A attached hereto and incorporated herein by reference is a typical lot site layout for general information to Owners and their builders, contractors and agents. The Committee shall not be limited or restricted to matters specifically shown or delineated on Exhibit A.

B. Power of Disapproval. The Committee may refuse to grant permission to construct, place or make the requested improvement, when:

(i) The plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of these restrictions;

(ii) The design, color scheme or construction materials of a proposed improvement is not in harmony with the general surroundings of the Lot or with adjacent buildings or structures; or

(iii) The proposed improvement, or any part thereof, would in the opinion of the Committee be contrary to the interests, welfare or rights of all or any part of the other Owners.

C. Power to Grant Variances. The Committee may allow reasonable variances or adjustments

of these restrictions where literal application would result in unnecessary hardship, but any such variance or adjustment shall be granted in conformity with the general intent and purposes of these restrictions, and no variance or adjustment shall be granted which is materially detrimental or injurious to other Lots in the Subdivision.

**Section 2. Duties of Committee.** The Committee shall approve or disapprove proposed improvements within thirty (30) days after all required information shall have been submitted to it. Should the Committee fail to act within the specified time, the requirements of this Article shall have been automatically waived and the Owner's plans shall be deemed to have complied with all requirements hereof. One copy of all submitted material shall be retained by the Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for the disapproval.

**Section 3. Liability of Committee.** Neither the Committee nor any agent thereof, nor the Developer, nor the Association, 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 according thereto.

**Section 4. Inspection.** The Committee may inspect work being performed with its permission to assure compliance with these Restrictions and applicable regulations.

## **Article VIII**

### **SANITARY SEWER UTILITY**

**Section 1. Establishment of Sewer Utility.** Sanitary Sewer Utility shall be provided by the Town of Chesterton.

**Section 2. Creation of Easements.** In addition to those easements granted and reserved in Article III, there is hereby granted and reserved, for the benefit of the Sewer Utility, private easements for the general purpose of providing the sewage disposal service anticipated by Section 1 of this Article, including, without limiting the generality of the foregoing, sewer main and individual lot laterals and constructed wetland area. The Developer or Board may grant additional easements for such purposes at any time.

**Section 3. Landscaping.** All exposed sewer treatment facilities will be landscaped in a manner that will reasonably obscure the visual sight of such facility.

**Section 4. Compliance with Regulations.** Each Owner hereby covenants and agrees, by acceptance of deed for a Lot or Lots, whether or not it shall be so expressed in such deed or other conveyance, to comply with any and all rules, regulations, ordinances, statutes or other laws adopted, promulgated or ordained by the Association, Sewer Utility, State of Indiana or any of its political subdivisions or agencies. United States of America or any of its agencies relating to the use, maintenance, repair and replacement of the sewage disposal system.

## **Article IX**

### **WATER UTILITY**

**Section 1. Establishment of Utility.** Water Utility shall be provided by Indiana American Water Co., Inc. The Water Utility will be subject to the jurisdiction of the Indiana Utility Regulatory Commission.

**Section 2. Creation of Easements.** In addition to those easements granted and reserved in Article III, there is hereby granted and reserved, for the benefit of the Water Utility, private easements for the general purpose of providing water to the Subdivision anticipated by Section 1 of this Article, including, without limiting the generality of the foregoing water main and individual lot laterals and constructed wetland area. The Developer or Board may grant additional easements for such purposes at any time.

**Section 3. Landscaping.** All exposed water treatment facilities will be landscaped in a manner that will reasonably obscure the visual sight of such facility.

**Section 4. Compliance with Regulation.** Each Owner hereby covenants and agrees, by acceptance of deed for a Lot or Lots, whether or not it shall be so expressed in such deed or other conveyance, to comply with any and all rules, regulation, ordinances, statutes or other laws adopted, promulgated or ordained by the Association, Water Utility, State of Indiana or any of its political subdivisions or agencies, United States of America or any of its agencies relating to the use, maintenance, repair and replacement of the water supply system.

## **Article X**

### **WETLAND PRESERVATION**

**Section 1. "Preserved Area" Defined.** The Developer has requested authorization from the Department of the Army Corps of Engineers to discharge fill material into jurisdictional wetlands located within the Subdivision. All such work shall be done in compliance with the Clean Water Act and any and all federal, state and local laws governing and regulating wetlands. Located within the Subdivision are certain other wetlands under the jurisdiction of the Army Corps of Engineers as determined by a certain Wetland Delineation Report prepared by Soil Solutions, Inc. Wetlands delineated thereby are on the plat or plats of Subdivision and located within "Wetland Easements" as denoted thereon. The Developer and each Owner does agree to preserve and protect the wetland areas (hereinafter referred to as the "Preserved Area"),

**Section 2. Protective Restriction.** The Developer and each Owner does hereby declare and restrict the Preserved Area from the discharging of dredge or fill material, dredging or other altering, modification or development of the Preserved Area. The restriction created in this Section shall be perpetual and binding upon the Developer and each Owner and their successors and assigns. The Department of the Army Corps of Engineers shall have the authority to enforce by injunctive relief, the provisions of this Article.

## Article XI

### USE RESTRICTIONS

**Section 1. Residential Use.** The real estate subject to these covenants and restrictions may be used for **single-family residential living** units and for no other purpose except as specifically allowed herein. There shall be no more than one (1) **principal dwelling on any one (1) Lot**. No business or commercial building may be erected on any Lot and no business may be conducted on any part thereof. No building or other improvements shall be erected upon any Lot without prior approval of the Committee as elsewhere herein provided. No accessory building shall be erected prior to erection of the principal dwelling or house.

A. Subdivision of a Lot. No Lot shall be divided, subdivided or reduced in size unless each divided or subdivided portion thereof is consolidated with one or more contiguous Lots under one ownership. In the event of the division or subdivision of any Lot as aforesaid, which results in the division of more than ten (10%) percent of any one Lot, the obligation for Association expenses attributable to the divided or subdivided Lot shall be and become proportionately attributable and chargeable to the contiguous Lot or Lots, and the Owner or Owners thereof, to and with which all or portions of the divided or subdivided Lot or Lots become consolidated.

B. Home Occupations. An owner may conduct his or her occupation in the residence provided that the following conditions are met:

- (i) no commercial activities shall be permitted;
- (ii) only office use shall be allowed;
- (iii) only the Owner of the residence, any permanent occupant and resident thereof and one outside assistant shall be permitted to conduct the home occupation;
- (iv) no signs shall be permitted;
- (v) all ordinances and regulations of the appropriate governmental authority shall be strictly complied with without variance or exception.

**Section 2. No Temporary Building.** No tents, trailers, vans, shacks, tanks or temporary or accessory buildings or structures shall be erected or permitted to remain on any Lot or in the Common Area without the written consent of the Developer, or of the Association after Developer has conveyed the last Lot which Developer owns in Subdivision.

**Section 3. Antennae.** No aerial, antennae or satellite dish antennae shall be placed or erected upon any Lot, or affixed in any manner to the exterior of any building in the Subdivision so as to be visible from any public street in the Subdivision. No satellite dish larger than twenty-four (24) inches shall be permitted in the Subdivision.

**Section 4. Boats and Motor Vehicles.** No boats, recreational vehicles or other motor vehicles, except four-wheel passenger automobiles, shall be placed, parked or stored upon any Lot or in the Common Area, nor shall any maintenance or repair be performed upon any boat or motor vehicle upon

any Lot, except within a fully enclosed building and totally isolated from public view. Each motor vehicle parked or stored upon any Lot shall be properly licensed and fully operational, except within a fully enclosed building and totally isolated from public view.

**Section 5. Trees.** Each Lot must have at least four (4) trees, eight (8) feet tall growing upon it in the front yard and /or parkway by the time that the dwelling structure is completed, each with a diameter of at least two (2") inches. No tree or shrub, the trunk of which exceeds four (4) inches in diameter, shall be cut down or otherwise destroyed without the prior express written consent of the Committee. A minimum of ten (10) shrubs shall be planted in the front yard area.

**Section 6. Artificial Vegetation.** No artificial grass, plants or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot, unless approved by the Committee.

**Section 7. Sidewalks.** Lot owner is required to install sidewalks prior to occupancy permit.

**Section 8. Automobile Storage Areas.** All houses shall have attached automobile garages which must be at least adequate to house two (2) standard size American automobiles. No automobile garage shall be permanently enclosed or converted to other use without the substitution of another enclosed automobile storage area attached to the house. All garages must have doors that are to be maintained in useable condition.

**Section 9. Clothes Drying Area.** No portion of any Lot or Common Area shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the building to be constructed on a Lot.

**Section 10. Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or on the Common Area. However, dogs, cats and other common household pets may be kept on Lots subject to such rules and regulations as may be adopted by the Association, so long as they are not kept, bred, or maintained for commercial purposes. No animals shall be allowed to run loose at any time.

**Section 11. Rubbish, Trash and Garbage.** No rubbish, trash, garbage or other waste materials shall be kept or permitted on any Lot or on the Common Area, except in sanitary containers located in appropriate areas concealed from public view.

**Section 12. Fences, Hedges and Walls.** No fence, hedge, wall or other dividing instrumentality shall be erected, except in the rear yard behind the dwelling and in no case to exceed six (6) feet in height, measured from the ground on which it stands. No fence shall be erected upon any portion of any Lot, unless approved by the Committee.

**Section 13. Nuisances.** Nothing shall be done or maintained on any Lot or on the Common Area which may be or become a nuisance to the neighborhood.

**Section 14. Accessory Building.** No Lot shall be allowed a separate free standing structure ancillary or accessory to the principal dwelling except where (i) the roof and siding materials are consistent with the grade and quality of the dwelling (ii) the square footage shall not exceed One Hundred Fifty (150) square feet; and (iii) the Committee shall grant the prior approval of the structure and its location on the Lot.

**Section 15. Signs.** No sign of any kind shall be displayed to public view on any Lot or any

Common Area, except for the following:

A. The Developer, or the sales agent for the Developer, may place one professional sign on any Lot or Lots for sale.

B. Owners shall not display or place any sign of any character, including "for rent" or "for sale" signs except that a sign displaying the word "open", may be displayed during any time the Owner or his designated representative is in attendance. The Committee shall approve all such signs including but not limited to the size, composition and design of each sign.

**Section 16. Common Area.** Nothing shall be altered in, constructed on or removed from, any of the Common Area except upon the written consent of the Association.

**Section 17. Miscellaneous.** No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot or any Common Area, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that any Owner shall fail or refuse to keep Owner's Lot free of weeds, underbrush or refuse piles, or other unsightly growths or objects, then the Association may enter upon said Lot and remove the same at the expense of the Owner as provided for herein, and such entry shall not be deemed a trespass.

**Section 18. Size Requirements.** The minimum square footage of living space dwellings constructed on Lots in the Subdivision, exclusive of porches, terraces, garages, carports, accessory buildings, or basements, or portions thereof, or similar facilities not designed for regular and continuous habitation, shall comply with the following: (1) All one-story residential structures shall have a minimum exterior dimensioned first floor area of 1,600 square feet; (2) All one and one-half story residential structures shall have a first-floor minimum exterior dimensioned floor area of 1,000 square feet, with a total of 1,800 square feet; (3) All two story residential structures shall have a first-floor minimum exterior dimensioned floor area of 900 square feet, with a total of 1,800 square feet. In computing the minimum square footage required above, the computation of square footage shall exclude porches, breezeways, attached garages or basements. Interior floor space open to second floor will be given credit as one and one-half floor area. All garages erected on the real estate shall be attached to the residence.

**Section 19. Residential Setback Requirements.** No dwelling, house or other above-grade structure designed to be used in connection with such house shall be constructed or placed on any Lot in the Subdivision except as provided therein.

(i) **Front Setbacks.** All dwellings or houses and above-grade structures designed to be used in connection therewith shall be constructed or placed on Lots in the Subdivision so as to comply with the front yard setback lines as established in the plat or plats of the various portions of the Subdivision, specifically twenty five (25) feet or as indicated on the plat

(ii) **Side Yards.** The side yard setback lines shall not be less than ten (10) feet from either side line of the Lot.

(iii) **Rear Yards.** The rear yard setback line shall be at least twenty five (25) feet from the rear Lot line.

**Section 20. Yard Lights and Mailboxes.** Each owner of a lot shall cause an exterior light fixture and mailbox to be installed and maintained, at such owner's expense. Exterior light fixtures shall be on and illuminated from dusk to dawn. All yard lights shall be 35 watt high pressure sodium dusk to dawn yard lights wired directly to the electrical panel. The light and pole shall be determined by the Developer and placed thirty five (35) feet from the center of the road and four (4) feet from the edge of the drive closest to the centerline of the lot. All mailboxes shall be determined by the Developer and placed two (2) feet from the back of the curb at locations determined by the Committee.

**Section 21. Exterior Construction.** Exterior construction material shall be approved by the Committee. All structures shall be required to meet the following minimum standards for exterior materials in the construction:

- A. Roofing shingles shall be made of premium asphalt or fiberglass.
- B. Minimum roof pitch on each dwelling shall be 5/12. Minimum roof overhang on the front elevation shall be 16" and 12" on all others.
- C. Each principal dwelling shall be constructed of (50%) percent or greater, natural brick, culture stone, or masonry product on the front elevation; the remainder can be either masonry products, cedar or vinyl siding.
- D. All exterior chimneys on the front elevation of the structure facing any street must be of brick, culture stone, or other similar type material; in no case shall small exterior chimneys with metal or artificial stone. Interior chimneys can match the exterior siding material.
- E. All driveways shall be Portland cement concrete, only and no wider than twenty (20) feet between the right-of-way line and the curb, unless approved by the Committee.
- F. No structure shall have exposed metal prefabricated flues or solar panels that extend above the highest roofline.

**Section 22. Heating Plants.** Every dwelling or house in the Subdivision must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation.

**Section 23. Natural Drainage.** No obstruction or diversions of the natural or constructed surface storm-water drainage swales or channels over or through which surface storm water naturally flows shall be made by any Owner in such a manner as to cause damage to other Lots or the Common Area. The only exception shall be with the approval in writing of the Architectural Review Committee where it is determined to be necessary to remedy on a Lot or Lots a condition of accumulation of storm water remaining over an extended period of time.

**Section 24. Diligence in Construction.** Every dwelling, house or other structure whose construction or placement on any Lot in the Subdivision is begun shall be completed with six (6) months after the beginning of such construction or placement on the Lot, including sodding or seeding. No improvement which has partially or totally been destroyed by fire, windstorm or other casualty shall be allowed to remain in such state for more than three (3) months from time of such destruction or damage.

**Section 25. Time in Which to Build Structures.** An Owner of a Lot within the Subdivision must commence construction of the dwelling or house within two (2) calendar years after the Owner's



purchase of the Lot or the Developer's sale of said Lot if the Owner did not purchase the Lot from the Developer directly. Multi-lot purchases by builders may have extended terms if agreed to in writing by the Developer. If construction does not begin or if a dwelling or house is not completed upon a Lot within the prescribed time, the Developer shall have the option to repurchase such Lot for a price, in cash, equal to the Owners' cost basis in the Lot, without paying the cost of improvements up to the time of repurchase. This option shall expire if Developer has not notified the Owner of Developer's intent to exercise the option prior to the time of commencement of the construction.

**Section 26. Necessary Exceptions for Development.** Developer, or the transferees of Developer, shall undertake the work of developing all Lots included within the Subdivision. The completion of that work and the sale, rent or other disposition of the dwellings is essential to the establishment and welfare of the Subdivision as an on-going residential community. In order that such work *may be* completed and the Subdivision established as a fully-occupied residential community as soon as possible nothing in this Declaration shall be understood or construed to prevent the Developer, Developer's transferees, or the employees, contractors or sub-contractors of Developer, or of Developer's transferees, from doing whatever they may determine to be reasonably necessary or advisable for the completion of the work and the establishment of the Subdivision as a residential community, and the disposition of Lots by sale, lease or otherwise. Owner, upon commencement of construction of any residence, dwelling unit or other structure, which is not prohibited by this Declaration shall pursue the performance of any construction diligently and continuously until completion of the structure involved. As used in this Section, the words, its transferees, specifically exclude purchasers of an individual Lot or Lots improved with completed residences or intended for construction at a later date by someone other than the Developer.

## **Article XII TRANSFER OF**

### **UNIMPROVED LOTS**

**Section 1. Developer's Right of First Refusal.** So long as Developer owns at least one Lot in the Subdivision, no Lot or any interest therein, upon which a single family residence has not been constructed shall be sold or transferred unless and until the Owner of such Lot shall have first offered to sell such Lot or Lots to Developer and Developer has waived, in writing, the right to purchase said Lot.

**Section 2. Notice to a Developer.** Any Owner or Owners intending to make a bonafide sale of a Lot or any interest therein shall give to Developer notice of such intention, together with a fully executed copy of the proposed contract of sale (the Proposed Contract). Within thirty (30) days of receipt of such notice and information, Developer shall either exercise, or waive exercise of, the right of first refusal. If Developer elects to exercise the right of first refusal, Developer shall within thirty (30) days after receipt of such notice and information, deliver to the Owner an agreement to purchase the Lot upon the following terms:

A. The price to be paid, and the terms of payment shall be that stated in the Proposed Contract or other terms agreed to by the Owner;

B. The sale shall be closed within thirty (30) days after the delivery or making of the Developers agreement to purchase.

**Section 3. Certificate of Waiver.** If Developer shall elect to waive the right of first refusal, or shall fail to exercise said right within thirty (30) days of receipt of the Proposed Contract, Developer's waiver shall be evidenced by a certificate executed by Developer in recordable form which shall be delivered to the Owner or the Proposed Contract purchaser.

**Section 4. Unauthorized Transactions.** Any sale of a Lot, or any interest therein, upon which a single-family residence has not been constructed, without notice to Developer and waiver of Developer's right of first refusal as aforesaid, shall be void.

**Section 5. Exceptions.** This Article shall not apply to a transfer to or sale by any bank, life insurance company, Federal or State savings and loan association, or real estate investment trust which acquires its title as a result of owning a purchase money mortgage upon the Lot concerned, and this shall be so whether the title is acquired by deed from the mortgagor or its successors in title or through foreclosure proceedings; nor shall this Article apply to a sale by any such institution which so acquires title. Neither shall this Article require the waiver by Developer as to any transfer of title to a Lot at a duly advertised public sale with open bidding which is provided by law, such as but not limited to execution sale, foreclosure sale, judicial sale or tax sale.

### **Article XIII**

#### **GENERAL PROVISIONS**

**Section 1. Duration and Remedies for Violation.** The covenants and restrictions of this Declaration shall run with and bind the real estate submitted pursuant to Article II hereof, and shall inure to the benefit of and be enforceable by the Developer, the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of fifteen (15) years from the date this Declaration is recorded, after which time said covenants and restrictions shall automatically be extended for successive periods of ten (10) years unless amended as provided for elsewhere in this Declaration. Violation or breach of any condition, covenant or restriction herein contained shall give the Developer, Association, or Owner (or any two or more of them in concert or individually) in addition to all other remedies, the right to proceed at law or in equity to compel a compliance with the terms of said conditions, covenants or restrictions, and to prevent the violation or breach of any of them, and the expense of such litigation shall be borne by the then Owner or Owners of the subject property, provided such proceeding results in a finding that such Owner was in violation of said covenants or restrictions. Expenses of litigation shall include reasonable attorneys' fees incurred by Developer and/or the Association in seeking such enforcement but attorney fees specifically shall not be allowed to an Owner enforcing these restrictions, unless granted by a Court and based upon an independent finding of entitlement to such damages.

**Section 2. Owner's Obligation to Maintain and Repair.** Each Owner shall, at Owner's sole cost and expense, maintain and repair Owner's residence, keeping the same in a condition comparable to the condition of such residence at the time of its initial construction.

#### **Section 3. Compliance With Soil Erosion Control Plan.**

A. The Developer has established and implemented an erosion control plan pursuant to the requirements and conditions of Rule 5 of 327 IAC 15 relating to Storm Water Run-Off Associated With Construction Activity. Each Owner shall undertake all erosion control measures contained therein as the plan applies to "land disturbing activity" initiated by Owner or Owner's builders, contractors and their subcontractors and to comply with the Developer's general permit under Rule 5 as well as all other applicable state, county or local erosion control statutes, ordinances, rules or regulations. All erosion control measures shall be performed by personnel trained in erosion control measures established by the Indiana Department of Environmental Management in guidance documents similar to, or as effective as, those outlined in the Indiana Handbook for Erosion Control in Developing Areas from the Division of Soil Conservation, Indiana Department of Natural Resources.

B. Every Owner shall indemnify and hold Developer harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which may arise out of or are connected with, or are claimed to arise out of or connected with, any work done by Owner, Owner's employees, agents, or subcontractors which is not in compliance with the erosion control plan implemented by the Developer.

**Section 4. Notices.** Any notices required to be sent to any Member or Owner under the provision of this Declaration shall be deemed to have been properly sent when mailed, postage paid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

**Section 5. Severability..** Invalidation of any one or more of these covenants and restrictions by judgment or Court Order shall in no way affect any other provisions, which shall remain in full force and effect.

**Section 6. Amendment.** This Declaration may be amended, modified or terminated at any time and from time to time upon the execution and recordation of an instrument executed by Owners holding not less than two-thirds (2/3) of the voting interests of the membership, provided that so long as Developer is the Owner of any Lot or any property affected by this Declaration, said amendment shall not be effective without Developer's express written joinder and consent.

**Section 7. Usage.** Whenever used the singular shall include the plural and singular, and the use of any gender shall include all genders.

**Section 8. Effective Date.** This Declaration shall become effective upon its recordation in the Office of the Recorder of Porter County, Indiana.

**Section 9. Adjacent Farm Activity.** The Lot Owners agree that the Subdivision exists in a somewhat rural environment, furthermore each Lot Owner agrees to the continuation of normal farming activity within any adjacent farm, provided said activity is conducted in a manner considered normal, accepted farming practice.

**Section 10. Conflicts.** To the extent there is a conflict between the Covenants and Restrictions and the requirements of the Chesterton Town Code the more restrictive requirements will apply.

IN WITNESS WHEREOF, the Developer has caused this Declaration of Covenants and Restrictions to be executed on the date first written above.

DTM PROPERTIES, LLC

By:

Dale Hiteman  
Dale Hiteman

Tom Lewandowski  
Tom Lewandowski

STATE OF INDIANA )

)SS:

COUNTY OF PORTER )

Before me, the undersigned, a Notary Public for Porter County, State of Indiana, personally appeared DTM Properties, LLC by Dale Hiteman and Tom Lewandowski and acknowledged the execution of the foregoing instrument to be their free and voluntary act.

Signed and sealed this 28 day of May, 2004.

My Commission Expires:

8/30/2006

Sheila G. Adkins

Notary Public

Printed: Sheila G. Adkins

County of Residence: PORTER