# RESTRICTIONS AND PROTECTIVE COVENANTS

# FOR CHAPEL CREEK, SECTION III

D.H.S., Inc., an Indiana Corporation, being the sole owner of all lots in Chapel Creek, Section III, Plat No. 981 as the same appears of record in the Office of the Recorder of Floyd County, Indiana, in Misc. Drawer 17, Instrument No. 2982, does hereby impose the following Restrictions and Protective Covenants upon each lot within the Plat of Chapel Creek, Section III, for the mutual benefit of all persons, firms and corporations who may now or hereafter have any vested interest, legal or equitable, in any lot within such development.

1. Primary Use Restrictions.

No lot shall be used except for private single family residential purposes. No structure shall be erected, placed or altered or permitted to remain on any lot except on single family dwelling designed for the occupancy of one family (including any domestic servants living on the premises), not to exceed two and one-half (2½) stories in height and containing a private garage attached for the sole use of the owner and occupants of the lot.

2. Approval of Construction and Landscape Plans.

No structure may be erected, placed or altered on any lot until the construction plans and building specifications and a plan showing the (a) location of improvements on the lot; (b) the grade elevation (including rear, front and side elevations); (c) the type of exterior material (including delivery of a sample thereof); and (d) the location and size of the driveway (which shall be ~~asphalt~~ or concrete), shall have been approved in writing by the Developer.

References to the "Developer" in this paragraph shall include any person, firm, corporation or association to whom Developer may assign the right of approval. References to "structure" in this paragraph shall include any building (including a garage), fence or wall.

3. Building Materials; Roof; Builder.

(a) The exterior building material of all structures shall extend to a minimum of six (6) inches below ground level and shall

be either brick, stone, brick veneer or stone veneer or a combination of same. However, Developer recognizes that the appearance of other exterior building materials (such as wood siding) may be attractive and innovative, and reserves the right to approve in writing the use of other exterior building materials.

(b) The roof pitch of any residential structure shall not be less than six (6) inches vertical for every twelve (12) inches horizontal for structures with more than one (1) story, and six (6) inches vertical for every twelve (12) inches horizontal for one (1) story structures.

(c) The general contractor constructing the residential structure on any lot shall have been in the construction business for a period of one (1) years and must have supervised the construction of or built a minimum of six (6) homes. Developer makes this requirement to maintain high quality of construction within the subdivision, and reserves the right to waive these standards of experience.

4. Garages and Swimming Pools.

The openings or doors for vehicular entrances to any garage located on a lot shall not face the front lot line. All lots shall have at least a two (2) car garage, but not more than a three (3) car garage unless otherwise approved in writing by Developer or any person, firm, corporation or association to whom it may assign such right. Garages, as separate structures, are subject to prior plan approval under Section 2 hereof. No carport shall be constructed on any lot.

5. Setbacks.

(a) No structure shall be located on any lot nearer to the front lot line or the side street line than the minimum building setback lines shown on the recorded plat. Developer may vary the established building lines, in its sole discretion, where not in conflict with applicable zoning regulations during the development of the subdivision. For purposes of this section, the development

of the subdivision shall be from the date that these restrictions and protective covenants are executed by the Developers to the date of the sale of the last remaining lot in Chapel Creek, Section III, to any person, firm or corporation other than the Developers.

(b) The front of any dwelling structure constructed on any lot shall be not further than five (5) feet behind the minimum building setback line shown on the recorded plat.

(c) For purposes of these Restrictions and Protective Covenants, all adjoining lots or portions thereof used as a site for the construction of a single dwelling structure shall be considered one (1) lot, so that these Restrictions and Protective Covenants relative to side lot lines shall mean the side lines of any one or more lots or portion or portions of any lot or lots used as a single dwelling building site.

(d) For purposes of this covenant, eaves, steps, and open porches shall not be considered as a part of the building, provided however, that this exception shall not be construed to permit any portion of a dwelling structure or any other building to encroach upon another lot. In no event shall any dwelling structure or any other building be erected in violation of side yard requirements of any applicable zoning ordinance in effect at the time of construction thereof. The minimum lot size shall be as shown on the recorded plat.

6. Minimum Floor Areas.

(a) The ground floor area of a one story house shall be a minimum of 1,800 square feet, exclusive of the garage.

(b) The total floor area of a two story house shall be a minimum of 2,100 square feet, exclusive of the garage.

(c) Finished basement areas, garages and open porches shall not be included in computing total floor area of any residential structure.

7. Nuisances.

No noxious or offensive trade or activity shall be conducted on any lot, nor shall anything be done which may be or become an

annoyance or nuisance to the neighborhood.

8. Use of Other Structures and Vehicles.

(a) No structure of a temporary character shall be permitted on any lot except temporary tool sheds or field offices used by a builder or Developers, which shall be removed when construction or development is completed.

(b) No outbuilding, trailer, basement, tent, shack, garage, barn, or structure other than the main residence erected on a lot shall at any time be used as a residence, temporarily or permanently.

(c) No trailer, truck, motorcycle, commercial vehicle, camper trailer, camping vehicle or boat shall be parked or kept on any lot any time unless housed in a garage or basement or parked to the rear of the improvements located on any lot so that the same shall not be visible to the public from any street located in the subdivision, or additions thereto. No automobile which is inoperable shall be habitually or repeatedly parked or kept on any lot (except in the garage) or on any street. No trailer, boat, truck or other vehicle, shall be parked on any street in the subdivision for a period in excess of twenty-four (24) hours in any one calendar year.

(d) No automobile shall be continuously or habitually parked on any street or public right-of-way. For purposes of this paragraph, habitually or continuously parked on any street or public right-of-way shall mean any period in excess of six (6) hours. It is the intent of the Developer that residents of the development park their automobiles in their driveways and/or garages.

9. Animals.

No animals, including reptiles, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets in this geographic area may be kept provided they are not kept, bred or maintained for any commercial

or breeding purposes. All household pets, including dogs and cats, shall at all times be confined to the lot occupied by the owner of such pet. No animal runs shall be constructed on any lot in the subdivision.

10. Landscaping; Sidewalks; Driveways; Trees.

(a) After the construction of a residence, the lot owner shall grade and hydroseed or sod that portion of the lot between the front and street side walls of the residence and the pavement of any abutting streets.

(b) Each lot owner shall concrete the driveway within three (3) months after completion of a single family dwelling.

(c) Upon an owner's failure to comply with the provision of this paragraph 10, Developer or any person or association to whom it may assign the right, may take such action as necessary to comply therewith, and the owner shall immediately upon demand, reimburse Developer or other performing party for all expenses incurred in so doing.

11. Mail and Paper Boxes; Hedges.

No mailbox, paper holder or hedge shall be placed or planted on any lot unless its design and placement or planting are approved in writing by Developer or by any person, firm, corporation or association to whom it may assign the right.

12. Underground Utility Service.

Utility service lines serving each lot shall be underground and shall be located only in those areas reserved on the plat for utility easements. The utility easements shown on the plat shall be maintained and preserved in their present condition and no encroachment therein, and no change in the grade or elevation thereof, shall be made by any person, firm or corporation owing any legal or equitable interest in any lot in the subdivision without the expressed consent in writing of the utility service companies providing utility service to the subdivision.

13. Clothes line; Fences and Walls.

(a) No outside clothes line shall be erected or placed on any lot.

(b) No fence or wall of any nature may be extended toward the front or street side property line beyond the front or side wall of the residence. Fences shall not exceed six (6) feet in height without approval of the Developer. Until all lots in Chapel Creek Section III are sold, the Developer may erect a permanent fence in excess of six (6) feet in height to screen the subdivision from adjacent property, the condition of which does not conform to these Restrictions and Protective Covenants. This provision shall apply only to lots which form the exterior boundaries of Chapel Creek, Section III.

(c) No tennis court fence shall be erected on any lot in the subdivision unless the fencing is coated with green vinyl.

(d) In the event that an inground swimming pool is installed on any lot in the subdivision, a privacy fence shall be erected to screen such swimming pool from sight.

14. Duty to Maintain Lot.

(a) From and after the date of purchase of a lot until construction of a single family residence is started, Developer shall have the exclusive right to perform all maintenance on the lots, including but not limited to mowing. Each owner shall be assessed an annual fee payable in January at the rate of $8.00 per month for the first three (3) years following the date the lot owner acquires title to a lot; thereafter, each lot owner shall be assessed an annual fee equal to Developer's actual cost of such maintenance, including overhead and supervision costs, until construction of a single family residence is started.

(b) From and after the date construction of a single family residence on a lot is started, it shall be the duty of each lot owner to keep the grass on the lot properly cut, to keep the lot free from weeds and trash, and to keep it otherwise neat and

attractive in appearance should any owner fail to do so, then Developer (or any person, firm, corporation or association to whom it may assign the right) may take such action as it deems appropriate, including mowing, in order to make the lot neat and attractive and the owner shall immediately, upon demand, reimburse Developer or other performing party for all expenses incurred in so doing.

15. Business; Home Occupations.

No trade or business of any kind (and no practice of medicine, dentistry, chiropody, osteopathy and like endeavors) shall be conducted on any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. Notwithstanding the provisions hereof or of paragraph 1, a new house may be used by a builder thereof as a model home for display or the builder's own office, provided said use terminates within eighteen (18) months from completion of the house or upon such additional period of time as may be expressly agreed to in writing by Developer or any person, firm, corporation or association to whom it may assign such right.

16. Signs.

No sign for advertising or for any other purpose shall be displayed on any lot or on a building or a structure on any lot, except one sign for advertising the sale or rent thereof, which shall not be greater in area than nine square feet, provided, however, Developer (i) shall have the right to erect larger signs when advertising the subdivision, (ii) to place signs on lots designating the lot number of the lots, and (iii) following the sale of a lot, to place signs on such lot indicating the name of the purchaser of that lot. This restriction shall not prohibit placement of occupant name signs and lot numbers as allowed by applicable zoning regulation.

17. Drainage.

Drainage of each lot shall conform to the general drainage plans of Developer for the subdivision.

18. Disposal of Trash.

No lot shall be used or maintained as a dumping ground for rubbish, trash, or garbage. Trash or garbage or other waste shall not be kept except in sanitary containers.

19. Easements.

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structures, plantings or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow or drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements of which a public authority or utility company is responsible.

20. Restrictions Run with Land.

Unless altered or amended under the provisions of this paragraph, these covenants and restrictions are to run with the land and shall be binding on all parties claiming under them for a period of thirty (30) years from the date this document is recorded, after which time they shall be extended automatically for successive periods of ten years, unless an instrument signed by a majority of the then owners of the front footage of all lots subject to these restrictions and covenants in whole or in part. Failure of any owner to demand or insist upon observance of any of these restrictions, or to proceed for restraint of violation shall not be deemed a waiver of the violation, or the right to seek enforcement of these restrictions.

21. Plan of Development of Chapel Creek.

Chapel Creek is planned to be developed in four (4) or more sections. Section III includes 26 lots subject to this declaration. Additional common areas may be conveyed to the Association at the time that subsequent sections are developed, and the

Developer reserves the right to annex subsequent sections to the original development and each lot owner in Section III and each of the subsequent sections annexed to such development shall have the right to become members of the Association; to share the use of all common areas; and such lot owners shall be assessed for common expenses the same manners as all the lot owners in this section of the subdivision.

22. Homeowners Association.

(a) Membership and voting rights

(i) Every owner of a lot which is subject to assessment 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 tc assessment.

(ii) The Association shall have two classes of voting membership: Class A. and Class B.

Class A. Class A members shall be all owners with the exception of the Developer and shall be entitled to one vote for each lot owned. When more than one person owns an interest in any lot, all such persons shall be members. The vote for such lots shall be exercised as they among themselves agree, but in no event shall such vote be split into fractional votes nor shall more than one vote be cast with respect for any lot. Each vote cast for a lot shall e presumptively valid. But if such vote is questioned by any member holding any interest in such lot, if all such members are not in agreement, the vote of such lot which is questioned shall not be counted.

Class B. Class B members shall be the Developer and the Class B member shall be entitled to three (3) votes for each lot owned. A Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs first: a. The total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership; or b. the 31st day of December, 1991.

(b) Creation of the lien and personal obligations of the assessments.

(i) The owner of any lot within the development by acceptance of a Deed to any such lot, whether or not it shall be expressed in such Deed, is deemed to covenant and agrees to pay to the Association an annual assessment or charge which is initially in the sum of Fifty Dollars ($50.00) per lot beginning with the initial conveyance of the lot for the Developer, and due the following January 1, and thereafter due in a like manner on the following 1st day of January. The annual assessment, together with interest, cost, and reasonable attorneys fees, shall be a charge on the land and shall be a continuing lien upon the property on which such assessment is made. Each assessment together with interest, cost and reasonable attorneys fees shall also be the personal obligation of the person who was the owner of such property at the time the assessments are due. The personal obligations for delinquent assessments shall not pass to his successors in title unless expressly assumed by them in the Deed to such lot.

(ii) The purpose of the assessments levied by the Association shall be exclusively to promote the recreation, health, safety, and welfare of the residents of the development and for the improvement and maintenance of the Common Areas.

(iii) The Homeowners Association, by vote of the majority of the members of said Association, may increase the annual assessment.

(iv) Effect of nonpayment of assessments: remedies of the Association: any assessments not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of Fifteen Percent (15%) per annum. The Association may bring an action at law against the owner primarily to pay the same or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of such lot.

(v) Subordination of the liens and mortgages. The liens of the assessment provided for herein shall be subordinated to the lien of any first mortgage in existence at the time that the assessment becomes a lien. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to any mortgage foreclosure or any proceedings in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for the assessments thereafter becoming due or from the lien thereof.

(vi) Exempt property. All properties dedicated to and accepted by a local public authority, the Common Area, and all properties owned by the Developer shall be exempt from the assessment created herein, except no land or improvements devoted to dwelling use shall be exempt from the said assessments.

(vii) The Developer shall call the first meeting of the Homeowners session by giving thirty (30) days written notice to all members. The first meeting shall take place no later than January 1, 1991.

(viii) Notice and quorum for any action. Written notice of any meetings called for the purpose of taking any action shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first meeting called, the presence of the members or of proxies entitled to cast Sixty Percent (60%) of all votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement. And a required quorum at the subsequent meeting shall be one-half (1/2) of the require quorum at the preceding meeting. No subsequent meeting shall be held more than sixty (60) days following the preceding meeting. A majority vote of the quorum shall be required to take any action.

(ix) Directors and incorporation: The Homeowners Association is an unincorporated entity and has not been

incorporated. The Homeowners Association pursuant to the regulations as set forth herein, may take by proper vote the action to incorporate the Homeowners Association or they may decide to stay as an unincorporated entity. The may also take the action of appointing a Board of Directors to act on behalf of the Association, and to set forth bylaws to guide the Association and/or its Directors.

(x) Owners easements and rights of enjoyment: Every owner shall have the right and easement of enjoyment in and to the Common Area which right and easement shall be appurtenant to and shall pass with the title to every lot subject to the following provisions:

(1) The right of the Association to dedicate or transfer any or all part of the Common Area to any public agency, authority or utility for such purpose and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by two-thirds (2/3) of each class of members has been recorded.

(xi) For the purposes of conformity and continuity with respect to the appearance of the portion of Chapel Creek, Section III that is bordered by Chapel Lane, the Association shall mow and maintain that portion of Lots Nos. 1, 6, 7, 21 and 22 which comprise the earthen berm facing Chapel Lane.

23. Enforcement.

Enforcement of these restrictions, excepting paragraph 22, shall be by proceeding at law or in equity brought by any owner of real property in Chapel Creek, or by the Developer against any party violating or attempting to violate any covenant or restriction, either to restrain violation, to direct restoration or to recover damages.

24. Invalidation.

Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

25. Obligation to Construct or Reconvey.

Each lot owner shall within two (2) years after the date of conveyance of a lot without a dwelling thereon, commence in good faith the construction of a single family dwelling approved according to paragraph 2, upon each lot conveyed; provided, that should said construction not commence within the specified period of time, the Developer may elect to repurchase any and all lots on which construction has not commenced for Ninety Percent (90%) of the agreed purchase price of said lot or lots hereunder in which event the lot owner shall immediately reconvey and deliver possession of said lot or lots to the Developer by Warranty Deed. Failure of the Developer to elect to repurchase any lot on which construction has not commenced under the terms of this provision shall not be deemed a waiver of the Developer's right to elect to repurchase in the future any or all of such lots on which construction has not commenced.

26. Reservation by Developer to Alter or Amend Restrictions and Protective Covenants.

The Developer, its successors and assigns, reserves the right to alter or amend these restrictions and protective covenants during the development period of the subdivision. For purposes of this section, the development period shall be from the date that these restrictions and protective covenants are executed by the Developers to the date of the recording of a Deed to any lot in Chapel Creek, Section III, to any person, firm or corporation other than Developer.

IN WITNESS WHEREOF: D.H.S., INC., Owner and Developer herein, has caused this instrument to be executed by its duly authorized officers this 18th day of April, 1990.

D.H.S., Inc.

BY: Norman A. Schuler
Norman A. Schuler, President

ATTEST:

David J. Hines
David J. Hines, Secretary

STATE OF INDIANA )
COUNTY OF FLOYD )

Before me, a Notary Public, in and for said county and state, personally appeared Norman A. Schuler and David J. Hines, President and Secretary respectively of D.H.S., Inc., and acknowledged the execution of the foregoing instrument.

WITNESS my hand and notarial seal this 18th day of April, 1990.

Mary E. Cash
Name
NOTARY PUBLIC

My Commission Expires: 8-26-91

Printed Mary E. Cash

County of Residence Floyd

Prepared by: J. Terrence Cody
Attorney At Law
P.O. Box 685
New Albany, IN 47150-0685
(812) 944-2205